



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by mail on May 15, 2014. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?
4. Is the Landlord entitled to keep the Tenant's security and pet deposits?

Background and Evidence

This tenancy started on February 1, 2014 as a fixed term tenancy with an expiry date of June 30, 2014. Rent was \$1,900.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 and a pet deposit of \$900.00 on January 18, 2014. The Landlord said the Tenant gave notice in writing on April 4, 2014 that they were moving out of the rental unit on April 25, 2014. The Landlord said she thought the Tenants moved out on April 28, 2014 and the Tenant said they moved out on April 26, 2014. The Tenant said there were no move in or move out condition inspections completed. The Landlord agreed no written condition inspection were completed and signed.

The Landlord said that the tenancy agreement is for 5 months ending on June 30, 2014 and the Tenants move out on April 28, 2014 and have not paid the May and June, 2014 rent. The Landlord said that because it was a fixed term contract to June 30, 2014 the Tenants are responsible for the lost rental income by the Landlord for May and June, 2014 in the amount of \$3,800.00. As well the Landlord said there was damage to a step in the house which cost \$100.00 to repair and the Landlord is requesting compensation in that amount to recover the cost of the repair.

The Tenant said when they moved into the unit there was many things the Landlord had promised to do that were not done and the Tenants were left to do the clean up. As well the Tenant said they had a verbal agreement with the Landlord that if they were to end the tenancy early the Tenants would only be penalized one month's rent if new tenants could not be found to complete the 5 month term.

The Landlord said they did not agree to any verbal agreement. The Tenant said this is the first time he has spoken to this Landlord as her father handled the tenancy so she does not know what the agreement was with her father.

On questioning the Landlord it became apparent that the Landlord's wanted to sell the unit after the Tenants move out. The Landlord first said she put it up for sale at the end of the tenancy because she did not want another tenant and later in the hearing the Landlord suggested that she advertised for a tenant on the internet. The Landlord provided no evidence of trying to rent the unit after the Tenant moved out.

The Tenant said in closing that they believed they had a verbal agreement on what would happen if the tenancy ended before the fixed term on June 30, 2014 and that was that they would be penalized one month's rent (\$1,900.00) if a new tenant could not be found. Further the Tenant said the Landlord was not communicative at the end of the tenancy so it was not possible to look for a new tenant.

The Landlord said in closing that the Tenants should be responsible for the 2 months rent to the end of the fixed term of the contract June 30, 2014. Further the Landlord said her father communicated by voice on the phone as he was not familiar with how to text on a smart phone. The Landlord said they tried to communicate with the Tenants.

Analysis

Section 45 of the Act says a Tenant may end a fixed term tenancy **not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the written agreement of the Landlord.

I find the Tenants did vacate the rental unit prior to the expiry date in the tenancy agreement June 30, 2014 and the Tenants did give the Landlord written notice to end the Tenancy on April 4, 2014. Therefore the Landlord was fully aware that the tenancy was ending at the end of April, 2014.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I find the Tenants are responsible for the May and June, 2014 rent of \$3,800.00 subject to section 7.2 of the Act.

Section 7.2 of the Act says a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this situation the Landlord said they put the unit up for sale not for rent; therefore the unit was not available for rent and the Landlord did not do whatever was reasonable to minimize the damage or loss. Consequently I find the Tenants are responsible for the May, 2014 rent in the amount of \$1,900.00 as their written notice was not in sufficient time for the Landlord to rent the unit for May, 2014. Further the Landlord did not mitigate or minimize the Landlord's loss therefore I dismiss the Landlord's claim for the June, 2014 rent of \$1,900.00.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord said she did not do condition inspection reports the Landlord is unable to establish the condition of the rental unit at the start of the tenancy and there is no move out inspection report completed by the Landlord and the Tenant, I find that the

Landlord has not established proof that the Tenant damaged the rental unit. Consequently, I dismiss the Landlord's claim for \$100.00 for damage to a step without leave to reapply.

As the Landlord has only been partially successful in this matter, I order the Landlord to bear the cost of the filing fee of \$50.00 that the Landlord has already paid. I order the Landlord pursuant to s. 38 and s. 67 of the Act to keep the Tenants' security deposit in the amount of \$1,000.00 and the Tenants' pet deposit in the amount of \$900.00 as full payment of the rent arrears.

Conclusion

The Landlord is ordered to retain the Tenants' security and pet deposits as full settlement of the Landlord's application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 16, 2014

Residential Tenancy Branch

