



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with a cross applications by the parties. The landlord filed to retain the security deposit and by the tenant applied for the return of the security deposit.

Issues to be Decided

Whether the landlord and the tenant had entered into a binding tenancy agreement?

Whether the landlord is entitled to retain the tenant's security deposit?

Background and Evidence

On August 12, 2008, the tenant responded to the landlord's rental ad on craigslist.com, viewed the rental unit and pursued her intention to rent it. The landlord was asking for \$1400.00 in monthly rent. After some negotiations, the landlord and the tenant agreed on the following terms and conditions of rental. The tenancy would commence on August 15, 2008 for a one year term ending on August 15, 2009. The monthly rent would be \$1350.00 inclusive of hydro charges. On the same day, the landlord collected from the tenant a security deposit in the amount of \$675.00.

The landlord and the tenant were to meet the next day on August 13 to enter into a written contract. On August 13, the landlord postponed their meeting until August 14 at 5 pm, citing work obligations as the reason.

On August 14, the tenant arrived at the building with her family. They met the landlord in the elevator. The tenant said that the landlord refused to give her a written contract for signing or the key to the rental unit. The landlord said that he invited the tenant and her family up to the rental unit where he had the tenancy agreement ready for signing. But the tenant refused to go to the rental unit and told the landlord that she had changed her mind about renting from him.

On August 18, the tenant sent her forwarding address in writing to the landlord by registered mail. On August 25, the landlord filed an application for dispute resolution.

Analysis

On August 12, the landlord and tenant verbally agreed on specific terms with respect to a tenancy that included the tenancy start and end date, the length of tenancy, the monthly rent and the utility charges. Furthermore, the landlord collected from the tenant a security deposit as a condition of entering into a tenancy agreement. Based on these facts, I find that the landlord and tenant had entered into a binding tenancy agreement. As a result, the rights and obligations of both parties came into effect pursuant to section 16 of the *Act*. Therefore, the tenant became obligated to pay the monthly rent and to provide thirty days notice to end the tenancy.

The tenant said that the landlord refused to execute a written contract or to give her the key to the rental unit. I find her assertion in this regard not to be credible. The landlord had advertised his unit for rent on craigslist.com and the tenant responded to the ad. Also, the landlord said that since the tenant changed her mind about renting the unit on August 14, he had been able to re-rent it for September 1. The above evidence indicates that the landlord did intend to rent out the unit and there was no reason for him not to execute all the necessary steps to complete the process.

Based on the above, I find that there was a binding tenancy agreement between the landlord and the tenant. Furthermore, the tenant failed to give the appropriate notice to

end this tenancy. The landlord is claiming damages as a result of the loss of rental income from August 15 to September 1 in the amount of \$675.00. I find that he is entitled to recover from the tenant such an amount.

Conclusion

The landlord has established a claim of \$675.00 in damages. He is also entitled to recovery of the \$50.00 filing fee for this application. I order that the landlord retain the \$676.94 security deposit and interests in partial satisfaction of his claim. I grant the landlord an order under section 67 for the balance due of \$48.06. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 20, 2008.