



Dispute Resolution Services

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

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant seeking return of his security deposit and a partial month's rent, and recovery of the filing fee for this proceeding on the claim that the landlord did not return the funds after the tenant found the rental unit uninhabitable and declined to move in as agreed.

Issues to be Decided

The dispute requires a decision on whether the tenant is entitled to the return of prepaid rent and/or the security deposit.

Background and Evidence

Without the tenant having seen it, the applicant entered into a verbal agreement to rent the subject rental unit for three months on January 21, 2009 and sent the landlord a cheque for \$1,250. Of that amount, \$450 was the balance of the rent for January and \$800 was to be the security deposit. The rent was to be \$1,625 per month.

The tenant stated that when he finally saw the rental unit on January 26, 2009, there was an unpleasant odour. He also said there were holes in the walls, an assertion challenged by the landlord.

As a result, the tenant declined to proceed with the tenancy and the landlord retained the deposit and the partial rent for January.

The landlord stated that she was not able to find new tenants until mid March 2009.

Analysis

Section 16 of the *Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Therefore, I find that the tenant is in breach of contract and is not entitled to return of the \$450 paid for the January rent.

However, the security deposit is treated in a distinctly different manner. Section 38(1) one of the *Act* states that, unless the tenant consents otherwise, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the security deposits plus interest or make application for dispute resolution to claim it.

As the tenant owed the landlord 30 days notice to end the tenancy under section 45 of the *Act*, even if January 30, 2009 is deemed to be the end date of the tenancy, the landlord did not make application to claim on the security deposit within the required 15 days. Therefore, I find that the landlord must return the security deposit.

However, as the tenant did not submit evidence that he had provided the landlord with a forwarding address to which the security deposit should be sent, and given that I have no evidence of joint condition inspection reports, I do not find the tenant is entitled to

double the security deposit as is prescribed at section 38(6) of the Act. Also, the tenant did not request the deposit in double.

As the tenant's application has succeeded for the most part, I find that he is entitled to recover the filing fee for this proceeding.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for the security deposit plus filing fee, an amount totaling \$850. (The agreement was of sufficiently short duration that no interest registered on the branch interest rate calculator.)

While the landlord stated that the tenant's breach resulted in a loss of rent for approximately six weeks, I am not permitted to make an award to the landlord from the security deposit on the tenant's application.

However, the landlord remains at liberty to make application for dispute resolution to claim rent and/or loss of rent.

March 31, 2009

Dispute Resolution Officer