



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MNSD & FF

Introduction

This hearing dealt with the landlord's application to retain the tenant's security deposit. Although the tenant was served with notice of this application and hearing by registered mail, she did not appear. I am satisfied that the tenant was served notice in accordance with section 89 of the *Act*, and I proceeded with the hearing in the tenant's absence.

Issues to be Determined

Was there a tenancy agreement between the landlord and the tenant? Is the landlord entitled to retain the tenant's security deposit plus interest?

Background and Evidence

The parties entered into discussions to negotiate a tenancy on February 12, 2009 when the tenant filled out a Pre-approval Application form required by the landlord. After assessing the information provided on this form the landlord approved the tenant as a potential candidate to enter into a tenancy agreement. The parties met again on February 20, 2009 and the tenant filled out a second form required by the landlord, called an Offer to Lease. In addition to filling out this form the tenant also provided the landlord with a cheque for the sum of \$412.50. The copy of the receipt provided to the tenant indicates that this was accepted as a security deposit. The parties did not sign a tenancy agreement on this date.

On approximately February 25th or 26th, 2009 the landlord received a letter from the tenant, dated February 24, 2009, indicating that she would not be taking the offered apartment for rent as her circumstances had changed. The landlord stated that their process was to sign the Offer to Lease, collect a security deposit and then enter into a fixed term tenancy agreement on the proposed possession date, in this case, on March 1, 2009.

The landlord filed this application on March 3, 2009. The landlord seeks to retain the tenant's security deposit plus interest in partial satisfaction of the revenue lost for March 2009 when the tenant did not take the apartment.

Analysis and Findings

I find that the landlord is not entitled to retain the deposit taken from the tenant on February 20, 2009. I make this determination on the basis that the parties did not enter into a tenancy agreement on February 20, 2009, but remained in negotiations. Although it was the intent of the parties to enter into a tenancy agreement on March 1, 2009, either party still had the right to withdraw.

Section 16 of the *Act* states that the rights and obligations of a landlord and tenant begin the date that the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. There was no reason that the parties could not have signed a tenancy agreement on February 20, 2009 with the effective possession date of March 1, 2009, which would have crystallized each party's rights and obligations. Instead the parties only signed the Offer to Lease form. I find that because the parties intended to enter into a tenancy agreement, but did not on February 20, 2009, the tenant and landlord still retained the right of refusal until the tenancy agreement was signed.

I also find that the landlord required or accepted a security deposit on February 20, 2009 contrary to sections 15 and 20 of the *Act* which prohibits the landlord for charging a fee during the acceptance, investigation and processing of prospective tenant or accepting a security deposit at any other time than when entering into the tenancy agreement. These statutes are reflected in policy guideline #29, *Security Deposits*, which states:

In addition, the Residential Tenancy Act⁶ provides that a landlord must not require that a security deposit be paid except at the time that the tenancy agreement is entered into, and that the security deposit must not exceed one-half of one month's rent.

Therefore, having found that the parties did not enter into a tenancy agreement the tenant was not obligated to provide the landlord with any notice and had the right to withdraw from signing a tenancy agreement. As a result the tenant is not liable for any loss or damage experienced by the landlord and the landlord is not entitled to retain the security deposit collected from the tenant.

Conclusion

The landlord's application to retain the tenant's security deposit is denied.

Dated June 01, 2009.

Dispute Resolution Officer