



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the landlord to keep all or part of the security deposit and to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were hand delivered to the tenant on May 01, 2009. The tenant confirmed she had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to retain the tenants security deposit?
- Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy started on April 01, 2009 and ended on April 30, 2009. Rent was agreed at \$520.00 per month due on the first of each month. This was a month to month tenancy and both parties had a verbal agreement. The tenant paid a security deposit of \$250.00 on March 30, 2009.

The landlord testifies that she rented the tenant the basement of her house and soon after found her financial circumstances to have changed and she needed to increase the rent to approximately \$800.00. The landlord approached the tenant and asked if she

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would pay the higher amount of rent. The tenant could not afford to pay this increase and the landlord discussed other options with the tenant and her parents who were acting on the tenants behalf. The first option was for the tenant to move upstairs and have a bedroom and a study room in the basement. She would have shared kitchen and bathroom facilities with the landlord and would pay \$300.00 per month in rent. The second option was to get a roommate and each roommate would then pay \$400.00 in rent for the basement suite. The third option was to pay an increase in rent for the basement suite up to approximately \$800.00. The landlord discussed with the tenant that if none of these options were acceptable then the landlord would have to give the tenant Notice to end the tenancy as she would have to move into the basement suite herself and rent out the upper level of the home.

The landlord showed the basement suite to potential tenants with the tenant permission while the tenant decided what she would do. The landlord planned to rent the suite out at the end of May, 2009 but was unsure what the tenant intended to do with the options she had presented to her.

The tenant agrees with most of the landlords' testimony. She testifies that she was very happy living in the suite and enjoyed her independence while studying hard for her exams. She found the whole business extremely distracting and upsetting when her exams were imminent. The tenant asked her parents to act on her behalf. Many discussions took place as to what the right decision would be faced with the landlords' options. The tenants' father testifies that after discussions with the landlord it was agreed that his daughter would move out of the unit as her privacy and studying was paramount at that time. None of the landlords' options were acceptable to her. The family started to look for alternate accommodation and found another rental unit which was available for May 01, 2009. The tenants' father believes that the potential tenants that viewed the rental suite did not want to move in until June 01 and it was at this time

the landlord wanted his daughter to stay until the end of May instead of the end of April. The tenant incurred additional costs by having to move from the rental unit.

The landlord confirms that the basement suite was re-rented on May 17, 2009 and the rent is now \$750.00.

Analysis

The landlord has attempted to change the tenancy agreement between the parties by requesting the tenant to change her living arrangements. Section 14 of the *Act* states that a tenancy agreement may be amended to add, remove or change a term, only if both the landlord and tenant agree to the amendment. Although there was not a written tenancy agreement the terms were verbal and remain enforceable. Therefore, I find that the tenant was given opportunity to consider making a change to her living arrangements and declined the landlords' options to do this as it was detrimental to her privacy and studies.

Section 41 of the *Act* states; a landlord must not impose a rent increase for at least 12 months. As the tenancy agreement was still in its first month the landlord is not at liberty to impose a rent increase. I understand the landlord had experienced some financial difficulties however, this is not the fault of the tenant and a verbal agreement still stood as to the amount of rent that was to be paid of \$520.00.

The tenant did move from the rental unit without giving One Months Notice to End the Tenancy but I find that the circumstances leading up to this warrants the tenants decision to move out without giving Notice. The landlords' options were not acceptable to the tenant and she found herself in a difficult position while wanting to remain at the rental suite but not being able to afford an additional rent increase. The landlord had



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clearly decided to re-rent the suite and due to this the tenant had found alternative accommodation.

Therefore due to the above I dismiss the landlords' application and **Order** her to return the tenants security deposit of \$250.00

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply. I Order that the landlord returns the tenants security deposit to the forwarding address given by the tenant within 15 days.

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: July 30, 2009.

Dispute Resolution Officer