

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNR, MNSD, FF.*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order pursuant to Section 67 for loss of income and the filing fee. The landlord also applied to retain the security deposit in satisfaction of his claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income and the filing fee and to retain the security deposit in satisfaction of this claim?

Background and Evidence

The landlord testified that the tenant viewed the suite on April 07, 2009 and agreed to rent it starting April 15, 2009. The tenant paid a security deposit in the amount of \$350.00 on April 10, 2009 and signed a tenancy agreement. The landlord stated that he was in the process of doing minor repairs to the suite and advised the tenant that the suite would be ready by the move in date.

The landlord testified that he received a call from the tenant on April 14, 2009 regarding the progress of the repair work and he assured the tenant that it would be done prior to the move in date. During this phone call, the landlord advised the tenant of his option to cancel the tenancy agreement as there were other prospective tenants still available. The tenant confirmed his intention of moving in on April 18, 2009.

The landlord stated that on the evening of April 17, 2009, he received a call from the tenant's father to advise the landlord that his son would not be moving in and requested the return of the security deposit.

The landlord advertised the availability of the unit and found a tenant for May 01, 2009. The landlord is claiming compensation in the amount of half a month's rent which is the loss he suffered and to retain the security deposit in satisfaction of this claim.

The tenant's father testified on his behalf and stated that the tenant decided not to rent the unit because the repair work was not completed in an appropriate manner. He stated that the landlord repaired the hole in the closet floor by filling it with gravel but this was not done to his satisfaction. The tenant also testified that the fire alarm system was not hard wired and he felt that this was a safety concern.

The tenant's father disputed the date of the phone call to the landlord to advise him that the tenant would not be moving in. He stated that he had made the call on the evening of Saturday April 18 and not on April 17 as alleged by the landlord. He stated that his son was all set to move in and went to check the unit prior to moving in. Around 3pm that day he requested his father to inform the landlord that he would not be renting the suite as the repairs were not completed to his satisfaction.

Analysis

The tenant signed a tenancy agreement and paid a security deposit. Based on these facts and pursuant to section 16 of the *Residential Tenancy Act*, I find that the landlord and tenant had entered into a binding tenancy agreement. Section 16 of the Act states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Once the security deposit is paid, the tenancy is considered started. Accordingly, the tenant is obliged to give the landlord one month's notice to end the tenancy and the landlord is entitled to the rent for that month.

In this case, the tenant entered into a tenancy agreement, but failed to give the landlord adequate notice to end the tenancy. The landlord made efforts to mitigate his losses by advertising the availability of the suite, and was successful in finding a tenant for May 01, 2009.

Based upon the sworn testimony of both parties, I find that the landlord suffered a loss of income in the amount of \$350.00 which is the rent for the latter half of April. The landlord has proven his case and therefore I find that the landlord is also entitled to the filing fee of \$50.00.

Overall the landlord has established a claim of \$400.00. I order that the landlord retain the security deposit of \$350.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$50.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security deposit and I grant the landlord a monetary order in the amount of **\$50.00**.

Dated August 06, 2009.

Dispute Resolution Officer