



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of the security deposit and a Monetary Order to recover the filing fee.

I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

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

Issues(s) to be Decided

- Is the tenant entitled to the return of all or part of her security deposit?
- Is the tenant entitled to recover her filing fee paid for this application?

Background and Evidence

This tenancy was due to start on August 15, 2009. Rent for this suite was \$740.00 per month. On July 28, 2009 the tenant signed a tenancy agreement and paid a security



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deposit of \$370.00. The tenant also gave the landlord a cheque of \$370.00 for her rent from August 15 to 31, 2009. The tenant did not move into the suite and the landlord returned her rent cheque of \$370.00.

The tenants agent claims that the tenant did not have opportunity to view the suite when she signed the tenancy agreement and believed the landlords caretakers promise that the suite would be cleaned, painted and all repairs done before she took possession on August 15, 2009. The tenants' agent claims that when they viewed the suite on August 08, 2009 they were not happy with the condition of the suite and thought the rent was too high for this suite. The tenant told the landlord that she did not think she now wanted to live in the suite and had rented another apartment.

The landlord claims the tenant viewed the suite on July 28, 2009 with her father and the landlords' caretaker. She agreed to take the suite and was told that the suite would be cleaned, repainted and fitted with new flooring and a stove. The suite would not be ready and available until August 15, 2009. The landlord claims that when the tenant saw the suite again on August 08, 2009 he was in the process of completing the work as promised however the tenant told him she had changed her mind about renting it and told the landlord she had rented another suite. The landlord returned the tenants rent cheque.

The landlord claims he had to re-rent the suite and managed to get new tenants that moved into the suite on September 01, 2009. The landlord has provided both the tenants tenancy agreement signed on July 28, 2009 and the new tenancy agreement which shows the suite was re-rented on September 01, 2009.

Analysis

I have carefully considered all the evidence before me. I find that the tenant did sign a tenancy agreement on July 28, 2009 and as such she entered into an agreement with the landlord to rent the suite from August 15, 2009. Section 16 of the Residential tenancy Act states:

Start of rights and obligations under tenancy agreement

- 16** 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 the tenant did enter into an agreement with the landlord and as such she is bound by the term of the agreement which was to rent this suite on a month to month basis from August 15, 2009. Section 45(1) of the Act states:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the tenant did not give the landlord any written notice to end the tenancy and did not take up residence of the rental suite I find the tenant is liable for the rent from August 15



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to August 31, 2009 of \$370.00. The landlord was able to re-rent the suite from September 01, 2009 and as such he was able to mitigate his loss for a further months' rent from the tenant. I find therefore, that the landlord can keep the tenants security deposit of \$370.00.

Conclusion

I Hereby dismiss the tenants application for the return of her security deposit without leave to reapply and also find she must bear the cost of filing her application.

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: January 05, 2010.

Dispute Resolution Officer