

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution for a monetary order.

The hearing was conducted via conference call and was attended by the tenants and the landlord's agent.

Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 16, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted into evidence the following documents:

- A summary of events; and
- Two receipts for a security deposit. One receipt is dated October 8, 2009 and states this is a deposit for the dispute address with occupancy to start on October 15, 2009 and one receipt is dated October 15, 2009 and states the damage deposit is paid in full.

The tenants testified that on October 8, 2009 they entered into a verbal tenancy agreement with the landlord to start October 15, 2009 and they paid the landlord \$100.00 as a deposit at that time.

The tenants testified that the agreement, as they understood it, was that they would pay \$500.00 for rent for the period between October 15, 2009 and October 31, 2009, that they would pay rent of \$1000.00 per month starting on November 1, 2009 and that they would pay an additional \$500.00 for a security deposit.

The male tenant stated that he met with the landlord and her friend at her home on October 15, 2009 at which point he paid an additional \$400.00. The landlord issued the receipt dated October 15, 2009. The landlord's friend then took the male tenant to complete the move in condition inspection, once there they completed the inspection but the friend refused to provide the tenant with keys to the rental unit. The tenant indicated he would call the landlord later.

After communication with the landlord the tenants stated they were informed by the landlord that they had to pay additional rent or they could do some repairs themselves but unless they paid additional they would not get the keys. The tenants indicated they would not be able to move in to the dispute address.

The landlord's agent testified that the agreement was that the tenants were to pay \$250 for the week from October 23 to October 31 and that the remaining \$250.00 was for a security deposit. The landlord did not file an application to keep the security deposit.

Analysis

In the case of verbal agreements, I find that where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Having said that, the receipts submitted by the tenant persuade me that the tenancy was to begin on October 15, 2009 and the tenants paid a security deposit in the amount of \$500.00. As I have found that the tenancy was to begin on October 15, 2009, the rights and obligations of the tenancy began, pursuant to Section 16 of the *Act*.

At that point the landlord, as per Section 30, could not unreasonably restrict access to the residential property by the tenant of the rental unit that is part of that property. As such, the landlord did not have to refuse keys to the tenant.

Section 45 of the *Act* stipulates that a tenant may end a tenancy if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period. I find that the tenants provided the landlord with ample opportunity to correct the situation.

As such, I find the tenants were in compliance with the *Act* to end the tenancy upon the landlord's receipt of their written notice.

Section 38 requires the landlord to return the security deposit within 15 days of the end of the tenancy and receipt of the tenants' forwarding address or file an Application for Dispute Resolution to claim against the security deposit. If the landlord fails to comply with this requirement, the *Act* goes on to say the landlord must pay the tenant double the amount of the security deposit.

As the landlord has neither returned the security deposit nor filed an Application for Dispute Resolution, I find the tenants are entitled to double the amount of the security deposit.

Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$1050.00** comprised of \$1,000.00 double the amount of the security deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: March 16, 2010.

Dispute Resolution Officer