

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

The landlord applicant was represented by her husband.

At the outset of the hearing, the landlord applied to amend the application to include an application for a monetary order for loss of revenue.

Issues(s) to be Decided

Is the landlord entitled to retain the security deposit?

Is the landlord's application to amend the Application for Dispute Resolution justified?

Background and Evidence

This tenancy began on July 1, 2009. Rent in the amount of \$800.00 is due on the 1st day of each month. The tenancy is a fixed term tenancy which is to expire on June 30, 2010. The tenant paid a security deposit in the amount of \$400.00 on June 14, 2009.

The landlord testified that the rented unit is next door to his business, and he saw the tenant and a couple of her friends as well as her young son at the unit on January 30, 2010. On January 31, 2010, he did not see anyone at the residence, and witnessed garbage outside the unit. He looked through the windows and saw empty boxes and newspapers on the floor but no furniture.

The landlord further testified that he placed an advertisement in the local newspaper on February 4, 2010 and showed the unit to about 6 perspective tenants. A new tenant agreed to take the unit but had to give 30 days' notice to vacate the present rental unit, and moved into this unit on April 1, 2010. He further testified that he has not yet been provided with the forwarding address of the tenant respondent herein.

The landlord also testified that during the tenancy, the tenant invited the landlord to her parents' house because she wanted them to develop a relationship, and she told the landlord that if it was necessary to get ahold of her, to use her parents' address. He further testified that she was at that address on February 17 when she was served with the dispute resolution documents.

Analysis

The landlord's application, which he states was served on the tenant personally on February 17, 2010, does not include any application for a monetary order other than for an order that the landlord retain the security deposit, but does not state why he should be permitted to do so. I find that amending the application to now include a claim for loss of revenue would prejudice the tenant. There is no evidence before me that the tenant was served with the application and notice of hearing documents, nor is there any evidence of why or how the tenancy ended. The landlord only supplied me with his verbal testimony that he sent the documents by registered mail, and that he saw the tenant there on January 30, 2010 and she wasn't there on January 31, 2010.

Section 38 of the *Residential Tenancy Act* states that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit and interest or make an application for dispute resolution. If the landlord does neither, the landlord must repay the tenant double the amount of the security deposit. The landlord made his application for dispute resolution on February 15, 2010, and I find that the application was made within the 15 days allowed by the legislation.

Conclusion

The landlord's application to amend the Landlord's Application for Dispute Resolution is dismissed. As a result, the landlord is not entitled to retain the security deposit, as he has no claim against it.

Where a party has not been successful with the application, the party is not entitled to an order that the party recover from the other party the filing fee for the cost of the application.

I order the landlord to return the security deposit to the tenant at her parent's address.

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: April 28, 2010.

Dispute Resolution Officer