



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application by the Landlord for monetary orders for unpaid rent, for money owed or compensation for loss under the Act or tenancy agreement, to keep all or part of the security deposit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

On November 19, 2009, the Tenant contacted the Landlord to enquire about renting the unit offered. The Tenant and an Agent for the Landlord viewed the rental unit. Later that day the Tenant contacted the Agent and informed him she would like to rent the unit.

The Landlord requested references from the Tenant and three were given. The Landlord contacted the references, and was satisfied, and approved the Tenant renting the unit. The tenancy was to begin on December 1, 2009.

Later on November 19, 2009, the Tenant met with the Agent again and provided a deposit of \$425.00 for the subject rental unit. The Landlord provided a receipt. The receipt includes the terms such as, "total rent per month \$850.00", and "rent balance due on or before December 1, 2009".

The testimony of the Agent for the Landlord was that he informed the Tenant they would do the incoming condition inspection report on December 1, 2009, as well as complete the Tenancy Agreement.

On November 28, 2009, the Tenant phoned the Landlord and advised that she was not taking the rental unit. According to the testimony of the Agent for the Landlord, the Tenant explained that she did not like some of the questions the Agent had asked her. The Agent testified that at that time the Tenant told the Agent the Landlord could keep the security deposit for any inconvenience.

The Tenant did not move into the rental unit on December 1, 2009.

On December 2, 2009, the Landlord posted a 10 day Notice to End Tenancy for unpaid rent on the rental unit door.

The Agent for the Landlord testified that on December 4, 2009, he began advertising the rental unit again. He was contacted by another person who was enquiring about the rental unit who eventually identified himself as a friend of the Tenant. The Agent testified that this caller told him he should return the Tenant's security deposit and when the Agent explained the Tenant said they could keep the deposit, then the caller became threatening. He threatened to go to the municipality and report the rental unit as an illegal suite. When the caller became verbally abusive, the Agent for the Landlord reported him to the police.

The Tenant testified that she decided she did not want to rent the unit because the Agent for the Landlord had told her during the viewing that she had to advise the Landlord when she was going to have visitors. The Tenant further testified that she researched the rental unit and found it to be illegal. She testified that she was refused content insurance because the rental unit was illegal. The Tenant also testified that the Agent for the Landlord had told her the rental unit would not be available for December 1, 2009, because they were doing renovations to the unit. She also did not like the fact that the Landlord controlled the heat in the rental unit. The Tenant also alleges that since the Landlord did not perform a condition inspection report there can be no claim against the security deposit.

In reply the Agent testified that there were no restrictions placed on the Tenant's ability to have visitors. As for the alleged renovations, the Agent testified he had told the Tenant that a plumber would be installing a washer and dryer in the rental unit for her use. He further testified that the rental unit was equipped with a gas fireplace which the Tenant would have control over.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has breached the Act and the Landlord has suffered a loss due to the breach.

As a result of the Tenant paying the deposit and the terms written on the receipt given for the deposit, I find that the Tenant had a right to possess the rental unit under an implied tenancy agreement, which was to begin on December 1, 2009. The definition of "tenancy agreement" in section one of the Act includes such an implied agreement. When the Tenant did not pay the Landlord rent for December 2009, the Tenant breached the Act.

The Tenant was also aware the Landlord would do a condition inspection report on the date of move in, which in fact is the preferred method under the Act. Therefore, there was nothing under the Act preventing the Landlord's claim against the deposit.

I found that much of the Tenant's testimony lacked veracity. For example, she claimed part of the reason she changed her mind and did not want the unit was that it was being renovated and could not be occupied on December 1, 2009, when in fact she had viewed the unit and had accepted it without reservation. Furthermore, I find in this particular instance the simple installation of a washer and dryer do not constitute a renovation.

I find the Landlord mitigated the potential loss, as required by the Act, and began advertising the rental unit after the Tenant failed to move in and pay rent for December 1, 2009.

I find the Landlord is entitled to one month of lost rent due to the Tenant's breach. The Landlord had insufficient evidence to prove the cost of advertising and I do not allow this portion of the monetary claim.

Therefore, I find that the Landlord has established a total monetary claim of **\$900.00**, comprised of \$850.00 for one month rent and the \$50.00 fee paid by the Landlord for this application. I allow the Landlord to keep the security deposit of \$425.00 in partial satisfaction of the claim, and I grant the Landlord an order under section 67 for the balance due of **\$475.00**. This order 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: June 04, 2010.

Dispute Resolution Officer