



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: *MND, MNSD, MNR, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income and to recover the costs of cleaning and repair to the rental unit and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

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

Issues to be decided

Has the landlord established a claim for loss of income and costs incurred to repair and clean the rental unit? Is the landlord entitled to retain the security deposit and to recover the filing fee?

Background and Evidence

The tenancy started on May 15, 2010 and ended on September 30, 2010. The landlord filed a copy of a month to month tenancy agreement entered into on April 25, 2010. The landlord also filed a single page (Page 2 of a standard tenancy agreement) which states that the tenancy is a month to month as well as a fixed term tenancy ending on October 31, 2010. The monthly rent was \$1,750.00 payable on the first of each month. The tenant paid a security deposit in the amount of \$875.00.

The tenant immigrated to Canada in April 2010 and enrolled his daughter in a school located in the proximity of the rental unit. The school requested that in order to enrol the student, the tenant had to have a lease of a minimum of six months. The tenant requested the landlord to provide an amendment to the tenancy agreement.

The rental unit was listed for sale and both parties came to an understanding that the lease was entered into for the sole purpose of providing the school with documents and if the property sold the tenant would not hold the landlord responsible for breaking the lease. Both parties agreed that the fixed term was not binding upon each other.

For personal reasons, on August 25, 2010, the tenant gave the landlord written notice to end the tenancy effective September 30, 2010. The tenant had plans to move out in the first week of September. Rent was paid in full for the month of September 2010.

The tenant stated that on September 04, the landlord came to the unit and inspected it. At the tenant's request, she wrote a cheque post dated October 01, 2010 for the return of the security deposit. The tenant moved out on September 07, gave the rental unit keys to his agent who in turn handed the keys over to the landlord on September 13, 2010.

The landlord stated that she gave the tenant his security deposit because he would not pay rent for September unless he received his security deposit. She agreed that she put a stop payment on the cheque shortly after.

The landlord stated that she advertised the unit on the internet and had some showings but was not able to find a tenant for October 2010. Later during the hearing, the landlord stated that she allowed the new tenants to bring in their cleaning supplies on September 27, a few days prior to the start of tenancy. In order to be clear about the date that the tenant started storing her cleaning supplies in the unit, I asked the landlord to confirm the date a second time. The landlord confirmed that the date the tenant started moving in was September 27. The landlord is claiming \$1,750.00 for loss of income for October and to keep the security deposit for the cost of cleaning, painting and replacing a counter top.

The tenant stated that he had cleaned the unit well and that the landlord had inspected it prior to giving him a cheque for the return of the security deposit.

In addition, the landlord accepted the keys to the unit on September 13 and wrote a receipt, but did not mention any claim for damages. The tenant also denied causing a burn mark on the counter top.

The landlord filed photographs of the countertop, kitchen cabinets etc. but did not file any receipts as proof of expenses she incurred for cleaning, painting and repairs

Analysis

Based on the sworn verbal testimony and documentary evidence of both parties, I find that the landlord's testimony was contradictory with regard to the date that the new tenant moved in. In addition, the tenant gave the landlord adequate notice and by mutual agreement was not in a fixed term lease. The landlord did not file any evidence to support her claim of having advertised the availability of the unit. Based on the landlord's testimony, I find that on a balance of probabilities, the landlord found a tenant for October and allowed her to move her belongings in at the end of September. Therefore, I find that the landlord did not suffer a loss of income for October and accordingly her claim for \$1,750.00 is dismissed.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The burden of proof is on the landlord to prove that the tenant is responsible for damage that is identified after the end of tenancy. I find that the landlord did not complete move in and move out inspection reports, to support her claim that the tenant caused the damage nor did she file any receipts to support her claims for costs incurred for cleaning, painting and repairing the counter top. In addition, I find that the landlord returned the deposit to the tenant by cheque which she later put a stop on. Therefore I find that the landlord has not proven her case and accordingly her claim to retain the security deposit is dismissed.

Since the landlord has not proven her case she is not entitled to the recovery of the filing fee. I order that the landlord return the security deposit to the tenant within fifteen days of receiving this decision.

Conclusion

The landlord's application is dismissed. The landlord must return the security deposit in the amount of **\$875.00** to the tenant.

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 18, 2011.

Residential Tenancy Branch