



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by both tenants; their two witnesses; and the landlord's agent.

Issue(s) to be Decided

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

Background and Evidence

The tenants testified that they entered into a tenancy agreement on October 13, 2010 to rent the unit effective November 1, 2010 but when they contacted the landlord prior to the start of November 2010 they were informed the unit would not be ready for them and the parties agreed on changing the start date of the tenancy to December 1, 2010.

The tenants testified that when they tried to contact the landlord to obtain keys on December 1, 2010 the landlord failed to respond to their calls and that they continued to try to contact the landlord for several days but that it wasn't until the tenants contacted the owner of the rental unit that the agent returned the tenants' calls.

A former landlord of the tenants testified that he overheard a call between the mail tenant and his new landlord discussing changing the date of the start of the tenancy to December 1, 2010 and as he had no found replacement tenants he agreed to allow the tenants to remain at their former address for an additional month.

A work colleague of the male tenant testified that, although she could not remember specific dates or even what month, she did overhear the male tenant trying to contact the landlord over the course of several days and that he spoke about his attempts and that he was not contacted by the landlord until he had served his Application for Dispute Resolution.

The landlord's agent testified the tenants had contacted her prior to the November 2010 start date of the tenancy to see if they could move in early and that she advised them

that it would not be ready until November 1, 2010. She stated that when that did not work for the tenant she agreed to change the start date to December 1, 2010.

The agent further testified that on November 27, 2010 she received a phone call from the tenants stating that they would not be moving in to the rental unit as they were going to buy a house and no longer wanted the rental unit. The landlord stated that she informed them that they would keep the security deposit unless the tenants found a new tenant for December 2010. The tenants deny ever advising the landlord that they had decided to buy a house.

Both parties agree the tenants did not provide the landlord with a forwarding address to send the security deposit to.

Analysis

Section 16 of the *Act* stipulates that 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.

Section 38(1) states that the landlord must, within 15 days of the end of the tenancy and the date the landlord receives the tenants' forwarding address in writing, return the security deposit or make an application for dispute resolution claiming against the security deposit.

As both parties agree the tenants failed to provide the landlord with a forwarding address, I find the tenant's application to be premature. However, as there was no indication from the tenants that the address provided on their Application for Dispute Resolution is different from their forwarding address, I find that as of the date of this hearing the landlord has been provided with the tenant's forwarding address in accordance with Section 38(1).

Conclusion

Based on the above, I dismiss the tenants' application in its entirety with leave to reapply should the landlord fail to comply with their obligations under Section 38 of the *Act*.

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 06, 2011.

Residential Tenancy Branch