



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, O

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the applicant the opportunity to testify at the hearing.

The respondent was served with notice of the hearing by registered mail that was mailed on March 31, 2011, but did not join the conference call that was set up for the hearing.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$1070.00.

Background and Evidence

The applicant testified that:

- She viewed the rental unit on March 14, 2011 and at that time it was extremely dirty, had not been cleaned at all, and the driveway was full of snow.
- The landlord assured me that as soon as I paid the security deposit, he would replace the toilet and ensure the rental unit was cleaned.
- The landlord also told her that if she arranged to have the driveway cleared he would pay her for the costs incurred.

- On May 20, 2011 I paid by security deposit of \$325.00 in the first month's rent of \$650.00 and obtained the key.
- At that time the landlord again assured me that the rental unit would be fully cleaned once the driveway had been cleared of snow to allow access.
- On March 21, 2011 she had the driveway cleared at a cost of \$45.00 and at that time it became very clear that there was large amount of garbage underneath the snow.
- She met the landlord again the next week and at that time the toilet had been replaced however the rental unit was still filthy; however she was still relying on his assurances that it would be cleaned and therefore she signed a tenancy agreement, a copy of which was never provided to her.
- In the tenancy agreement all utilities were to be included however the landlord informed her that she would not have access to the thermostat for the heat and if she was cold she should just buy an electric heater.
- As the beginning of the tenancy was quickly drawing near and the landlord had, as yet, failed to do any cleaning, she decided to attempt to do some cleaning herself however the task proved to be overwhelming.
- She therefore again informed the landlord that the unit was unliveable and she was unable to do the cleaning herself, however he simply laughed at her and said too bad she already signed the agreement and paid her rent and therefore she would have to deal with it.
- Because the landlord was failing to supply the rental unit in a proper condition and because the unit was unhealthy and filthy she decided to not to move into the rental unit and requested the return of her rent and security deposit.
- The landlord told her that he would return her security deposit but not her rent, however to date he has failed to return any money.
- Due to the landlord's failure to provide a rental unit that met health, safety, and housing standards she was put in a very difficult situation and ended up having to live with friends for a period of time.

The applicant is therefore requesting an order as follows:

return of full security deposit	\$325.00
Return of rent	\$650.00
Cost of snow removal	\$45.00
Filing fee	\$50.00
Total	\$1070.00

The tenant supplied a significant number of photos that show the condition of the rental unit on the date she was to move in.

Analysis

It is my decision that the tenant has shown that this rental unit was not reasonably suitable for occupation on the date that she was supposed to move in.

The tenant has supplied substantial photo evidence that shows of this rental unit was extremely dirty and that there was a large amount of garbage left in and around the rental unit.

Further since utilities were to be included in the rent, it was not reasonable to expect the tenant to move into the rental unit that had no access to heat, especially since it is often still very cold in the month of April.

I agree with the tenant's argument that this rental unit did not meet health, safety, or housing standards and therefore she was fully justified in informing the landlord she would not be occupying the rental unit and requesting the return of her rent and security deposit.

I therefore allow the tenants full claim and I further order that the landlord to pay an additional \$325.00 for the following reason:

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now well past.

This tenancy ended on April 1, 2011 and the landlord had a forwarding address in writing by April 5, 2011, sent by registered mail March 31, 2011, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore even though the tenant has not applied for double the security deposit, the landlord is required to pay double the amount of the security deposit to the tenant.

Conclusion

I have issued a monetary order in the amount of \$1395.00.

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: July 12, 2011.

Residential Tenancy Branch