



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

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

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for an order for return of her security deposit in the amount of \$400.00.

The landlord's application is a request for a monetary order in the amount of \$1200.00, a request for recovery of the \$50.00 filing fee, and a request to retain the full security deposit towards the claim.

Tenants application

The tenant has applied for the return of her security deposit; however the tenant did not give the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

Therefore at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

At the hearing the tenant stated that the address on the application for dispute resolution is the present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today August 23, 2011 and since the landlord has already applied for dispute resolution to keep the security deposit I will deal with the security deposit under his application.

Landlords application

Background and Evidence

The landlord testified that:

- The tenant agreed to rent the unit for May 1, 2011, however she asked if she could moving in early, and he agreed.
- The tenant knew that there was still work being done on the rental unit and that it would not be ready until May 1, 2011 however she seemed to really need a place and wanted to move in anyway.
- The tenant moved in around April 28 and he had the fridge and stove delivered shortly thereafter.
- On May 1 without giving proper notice the tenant informed him that she was moving back out again.

- As a result he lost the full rental revenue for the month of May 2011 and therefore is asking for an order for that lost rental revenue and an order to keep the security deposit towards the claim.

The tenant testified that:

- She did agree to rent the unit for May 1, 2011 however she asked the landlord if she could move-in earlier and originally the landlord told her the unit would be ready around the 20th of April 2011.
- The unit was not ready by April 20 and therefore she scheduled a move-in date for April 28, as landlord assured her the unit would be ready by the 28th.
- The unit was not ready on the 28th, as there were still many things in the unit that had not been completed.
- The landlord assured her that 90% of the work would be completed by April 29, however when she returned from work on the 29th she found that little had been done and when she contacted the landlord informed her that it would all be completed by May 2nd.
- The fridge and stove were delivered on April 30, 2011 however by May 1, 2011 there was still a substantial amount of work to be done and therefore she made the decision to move out of the rental unit as she felt she could not live with the unit in that condition.
- She therefore informed the landlord that she was moving and she vacated by the end of May 1, 2011.
- She does not feel she should have to pay any rent for the month of May 2011 because the rental unit was not ready for occupancy.

In response to the tenant's testimony the landlord testified that:

- There was no reason for the tenant to move out, and he had the rental unit completely finished on May 2, 2011.

Analysis

It is my decision that the tenant did not have the right to vacate the rental unit without giving the required Notice to End Tenancy.

The tenant has argued that the rental unit was not in any condition to be occupied by May 1, 2011 and therefore she believes she had the right to move out of the rental unit, however I have viewed the photo evidence supplied by the tenant and although there was still some work required to be done at the rental unit, it is my decision that it was not sufficient to warrant ending the tenancy.

I agree that it may have been inconvenient for the tenant to not have the rental unit completed prior to her moving in, however I do not accept the tenants claim that she could not occupy the rental unit in that condition.

I therefore allow the landlords claim for lost rental revenue and for recovery of the filing fee.

Conclusion

I have allowed the landlords full reduced claim of \$850.00 and I therefore order that the landlord may retain the full security deposit of \$400.00 and have issued a monetary order in the amount of \$450.00.

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: August 23, 2011.

Residential Tenancy Branch