



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This conference call hearing was convened in response to the tenant's application for the return of double the amount of the security deposit, and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to the return of double the amount of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

B.C, agent for the landlord, testified that there was no written agreement. She stated that the tenancy started May 10th, 2010, that she intended to write an agreement but that the tenant moved out the next day. Rent was \$800.00 per month and the tenant paid a security deposit of \$400.00. B.C. stated that upon verbal notice from the tenant that he was ending the tenancy, she returned the tenant's security deposit and kept \$400.00 back for half a month's rent for May. In her documentary evidence, the landlord provided a copy of a receipt dated May 10th, 2010, confirming that rent for May and the security deposit were paid. That same receipt also showed that \$800.00 was returned to the tenant on May 11th, 2010. The landlord also provided a copy of email

correspondence with the tenant, wherein she informed the tenant on May 27th, 2010 that although he could leave anytime under the tenancy, a one month notice was still required.

Y.L, the tenant's agent, testified that the landlord did not provide a contract, and that the parties had verbally agreed that the tenant could leave anytime. She stated that because the unit was only 600 square feet compared to the advertised 700 square feet, and because it did not have a tub in the bathroom, the advertising was misleading and the tenant decided to move out. The tenant confirmed receipt of \$800.00 on May 11th from the landlord and claims the return of double the amount of the security deposit. B.C. said that she received the tenant's forwarding address in writing on May 9th, 2011.

Analysis

I am satisfied that the parties reached a verbal tenancy agreement concerning the rental of the unit in question on May 10th, 2011. Section 5 of the Act states in part that landlords and tenants may not avoid or contract out of the Act or the regulations; therefore I find that the parties were obliged to comply with all provisions of the Act starting May 10th, 2010. Since the parties' testimony is at complete odds concerning the terms upon which the tenancy may end, I must turn solely to the Act to determine whether the tenant is entitled to the return of his security deposit as claimed.

Section 45(1) of the Act states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice. If the tenant had concerns with the tenancy or the rental unit, a remedy would have been to seek assistance through the Residential Tenancy Branch or to apply for dispute resolution. Square footage and the absence of a tub do not relieve the tenant's obligations towards the Act. The tenant chose to leave the next day and in so doing failed to provide proper notice as required by statute. The landlord was entitled to keep the rent for the full month of May, and I find that the landlord's return of half a month's rent to the tenant reasonable.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing. Based on the parties' testimony, I also accept that when the tenant received a refund of \$800.00 on May 11th, the landlord returned the tenant's security deposit and complied with the Act; therefore the tenant is not entitled to claim for double the amount.

Conclusion

The tenant's application is dismissed.

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: September 16, 2011.

Residential Tenancy Branch