



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNDC, MNSD, FF
 Landlord MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenant's security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on June 30, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on September 22, 2011, which is not in accordance with section 59(3) of the Act, which requires documents to be served 3 days after the application is made. The Tenant made the application on July 8, 2011 and served the Landlord on September 22, 2011. The Landlord said he did not have enough time to prepare a response to the Tenants application. Consequently the Tenant's application is dismissed (with leave to reapply) for not complying with the service requirements of section 59 (3) of the Act.

The Tenant confirmed that he received the Landlord's hearing package.

Issues to be Decided

Landlord:

1. Are there damages or losses to the Landlord and if so how much?
2. Is the Landlord entitled to compensation for damage or loss and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy was to start on June 15, 2011 the Landlord said it was a fixed term tenancy for 3 months and then it was to renew as a month to month tenancy. The Tenant said it was a month to month tenancy. Rent was \$900.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$450.00 on May 22, 2011. The Tenant did not move into the rental unit.

The Landlord said he went to the rental unit to do the move in condition inspection and to sign the tenancy agreement on April 15, 2011. The Landlord continued to say the Tenant looked at the rental unit and asked if he could move in the next day, but the Tenant did not sign the condition inspection report or tenancy agreement because he was in a hurry to pick up his daughter. The Landlord said the Tenant said he would return to complete the documents that night. The Landlord said he waited until later that night, but the Tenant did not return. The Landlord continued to say he tried to contact the Tenant the next day, but the Tenant did not return his calls. The Landlord said the Tenant sent him an email on June 18, 2011 that said he was not moving in and requested the Landlord to return his security deposit.

The Landlord said he is applying for compensation for loss rent for June 15, 2011 to June 30, 2011 in the amount of \$450.00 and lost rent for July, 2011 in the amount of \$900.00 as the Tenant did not move in and did not give the Landlord proper notice that he was not moving in.

The Tenant said that Landlord tried to give back the Tenant's security deposit to end the tenancy as the Tenant said the Landlord wanted the unit for his family to live in. The Tenant said "no" he wanted to rent the unit and it was his right because he had paid the security deposit which established the tenancy. The Landlord said he checked with the Residential Tenancy Branch and agreed the tenancy was established by the Tenant paying the security deposit and therefore the Landlord agreed to go ahead with the tenancy. The Tenant continued to say the Landlord put a clause in the Tenancy agreement that said the Tenant had to move out after 3 months. As a result of this cause the Tenant said he would not sign the tenancy agreement and consequently the Tenant did not move into the rental unit. The Tenancy Agreement submitted into evidence by the Tenant does not have a clause in it that says the Tenant has to move out at the end of three months. The Tenant said that is what he understood when the Landlord gave him the tenancy agreement to sign. The Tenant said he did not move into the rental unit and on June 18, 2011 he sent the Landlord an email that stated he would not be moving in to the unit and he requested the return of his security deposit.

Analysis

Section 29 of the Policy Guidelines says a landlord may collect a deposit or payment other than the rent at the commencement of a residential tenancy.

I find from that the Landlord received the Tenant's security deposit of \$450.00 on May 22, 2011 which established the tenancy whether or not the Tenant actually moved into the rental unit.

Section 44 of the Act says a tenant can end a tenancy by mutual agreement with the Landlord or by giving the Landlord proper written notice to end the tenancy. Section 45 of the Act says proper notice to end a tenancy on a fixed term tenancy is one month prior to the end of the fixed term of the tenancy or in a month to month tenancy one month prior to moving out, based on the day that rent is paid.

It is apparent from both the Tenant's and Landlord's testimony that a tenancy was established when the security deposit of \$450.00 was paid on May 22, 2011. It is also apparent that the terms of the tenancy were not clear to both the Landlord and the Tenant. The tenancy agreement that was submitted into evidence was not signed, but both parties agreed it was the tenancy agreement that they were going to use. In that agreement there is no reference to the term of the tenancy. This is in contradiction to

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section 13 (f)(ii) of the Act, which say the periodic basis of the tenancy must be stated whether it is a fixed term or month to month. The Tenant said he refused the tenancy because the Landlord said it was a fixed term of 3 month and he thought it was a month to month tenancy.

Consequently I find both the Landlord and the Tenant are responsible for the failure of this tenancy. The Tenant did not provide proper notice when he decided not to move into the rental unit and the Landlord did not complete the tenancy agreement in a timely and understandable fashion. Therefore I find the partially for the Landlord and award the Landlord \$450.00 for unpaid rent. I order the Landlord to retain the Tenant's security deposit as full settlement of his claims.

As the Landlord was only partial successful in this matter I further order the Landlord to bear the costs of the filing fee for this proceeding of \$50.00 that he has already paid.

As the Tenant's application is dismissed the Tenant is ordered to bear the cost of the filing fee for this proceeding of \$50.00 that he has already paid.

Conclusion

I order the Landlord to retain the Tenant's security deposit of \$450.00 as full satisfaction of the Landlord's application.

The Tenant's application is dismissed with leave to reapply as the Tenant did not comply with the service requirements 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*.

Residential Tenancy Branch