



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for unpaid rent; to keep the security deposit; and to recover the filing fee 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 landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord testified that the rental unit was already occupied by a primary tenant who paid \$1400.00 for the rent. He stated that on April 30th, 2011, H.L., the applicant tenant, agreed to move-in and to be added as co-tenant to the original tenancy agreement starting May 1st, 2011. The landlord said that each tenant paid \$700.00 for May's rent, and that H.L. paid a security deposit of \$350.00. The landlord said that on May 1st, 2011, H.L. changed her mind and no longer wanted to move into the unit, and that the

primary tenant moved out of the unit on May 31st, 2011 without giving proper notice to end the tenancy. The landlord stated that on May 16th, 2011, he refunded H.L.'s rent, and that upon receipt of her forwarding address, he filed for dispute resolution to keep H.L.'s security deposit for the loss of rental income in May 2011.

The tenant and witness E.S, the tenants' mother, testified that the unit was not ready for the tenant to move in on May 1st, 2011 because the departing co-tenants' belongings were still in the rental unit. The tenant said that she was not unable to contact the landlord, and that she had to take her belongings back to Surrey. The tenant stated that the landlord was unprofessional and did not present her with a written tenancy agreement.

The landlord argued that the owner, who was a contact person, was available and that by May 1st, 2011, there were only a few boxes left from the co-tenants.

In his documentary evidence, the landlord provided a copy of two receipts from the tenant, both dated April 30th, 2011: one in the amount of \$350.00 for the security deposit; and one in the amount of \$700.00 for that month's rent. He stated that he was able to re-rent the unit for June 1st, 2011. He said that is still short \$350.00 after keeping L.H.'s security deposit of \$350.00, and that he could have made a claim for the full month's rent.

Analysis

Based on the documentary and oral evidence, I accept that on April 30th, 2011, the parties entered into a tenancy agreement that started May 1st, 2011. Section 16 of the *Residential and Tenancy Act* specifies 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 occupies the rental unit. Therefore the parties were under statutory obligation towards one another under the Act, and the co-tenant was jointly responsible for any debts concerning the tenancy starting May 1st, 2011. The

responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

The tenant stated that she found that the landlord was, as she put it, unprofessional. Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. If the tenant had concerns with the tenancy, a remedy for would have been to seek assistance through dispute resolution to resolve the issue if the landlord failed to attend to the issue.

For the above noted reasons, I find that the landlord is entitled to keep the security deposit in partial satisfaction of the loss of rental income for May 2011 as claimed.

Conclusion

Since he was successful, the landlord is entitled to recover the filing fee and pursuant to Section 67 of the Act, I grant the landlord a monetary order \$50.00. This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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: October 24, 2011.

Residential Tenancy Branch