



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNSD, MNDC and FF
Tenants: MNSD and FF

Introduction

These applications were brought by both the landlord and the tenants.

By application of September 30, 2011, the landlord seeks a monetary award for loss incurred as a result of the claim that the tenants breached the rental agreement. The landlord also seeks to recover the filing fee for his proceeding from the tenants and authorization to retain the security deposit in set off against the balance owed.

By application of October 7, 2011, the tenants seek return of their security deposit in double on the grounds that the landlord did not return it or make application to claim upon it within 15 days of the latter of the end of the tenancy or receipt of the tenants' forwarding address. The tenants also seek to recover the filing fee for this proceeding from the landlord.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for damage or loss under the legislation or rental agreement and authorization to retain the security deposit

Background and Evidence

The parties are in agreement as to the following set of facts:

1. On September 1, 2011, the tenants viewed the rental property, paid a security deposit, signed a rental agreement and were given the keys;
2. Under the rental agreement, the month-to-month tenancy was to begin on September 15, 2011 at a monthly rent of \$900 and the tenants paid a security deposit of \$450.
3. On September 15, 2011, the tenants advised the landlord verbally that, for personal reasons, they no longer wished to proceed with the tenancy and agreed to meet the following day at the rental unit to do a walk through. The tenants had not occupied the rental unit.
4. On September 16, 2011, the male tenant met the landlord at the rental unit and returned the keys.
5. By letter of September 20, 2011, the tenants provided the landlord with their forwarding address and requested return of the \$450 security deposit.

The landlord advised that she had been able to find new tenants for October 1, 2011, and therefore, her claim is reduced to one-half month's rent for the period from September 15, 2011.

Analysis

A rental agreement is a binding contract that cannot be unilaterally repudiated by either party.

If a landlord signs an agreement to have a rental unit available for tenants, then the landlord can be held liable for consequential costs incurred by the tenants such as storage fees or hotel fees, for example, if it is not provided.

In the present matter, the tenants advised the landlord at the last minute of their change of mind making it a practical impossibility for the landlord to find new tenants for the latter half of September 2011.

Section 7 of the *Act* provides that, if either party to a rental agreement suffers a loss or damages due to non-compliance with the legislation or rental agreement, then the non-compliant party must compensate the other for the loss.

I find that the tenants were in breach of contract in failing to commence the tenancy as promised by the rental agreement and that they must compensate the landlord for the loss of two weeks rent.

As to the security deposit, section 38(1) of the *Act* requires that a landlord must return a security deposit or make application to claim on it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address.

As the tenant's obligation ended on September 30, 2011 and as the landlord made application that day, then I find that the landlord was entitled to make claim on the deposit. Accordingly, **I hereby authorize and order that the landlord may retain the \$450 security deposit in set off against the award for two weeks unpaid rent.**

As the security deposit has been lawfully claimed by and awarded to the landlord, I must dismiss the tenant's claim on its merits.

While I find that the landlord was entitled to recover her filing fee for this proceeding from the tenants, she graciously withdrew her request for it.

Conclusion

The landlord is authorized to retain the \$450 security deposit in set off against two weeks loss of rent. The tenants' application is dismissed without leave to reapply.

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: December 16, 2011.

Residential Tenancy Branch