



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR and FF
 Tenant: MNSD

Introduction

This hearing was convened on applications from both parties.

By application of October 21, 2011, the landlords seek a Monetary Order for unpaid rent and utilities after the tenant was unable to commence a fixed term rental agreement.

By prior application of October 12, 2011, the tenant seeks a Monetary Order for return of his security deposit.

As a matter of note, the male landlord noted that the tenant served only the female landlord with his notice of hearing. Therefore, the female landlord alone can be held accountable for an award favouring the tenant.

Issues to be Decided

This application requires a decision on whether either or both parties are entitled to a monetary award and in what amount.

Background and Evidence

The applicants signed a rental agreement on August 25, 2011 creating a 10-month fixed term rental agreement. Rent was set at \$1,500 per month plus \$300 utilities and the tenant paid a security deposit of \$1,000.

Shortly after signing the agreement, the tenant stated he had been in an accident and asked the landlords to attempt to find new tenants. The landlords stated that they had found new tenants for September 15, 2011.

By letter of September 12, 2011, the tenant had advised the landlords of his forwarding address and requested return of the security deposit. The landlords declined to return it in consideration of their loss of rent for first half of September 2011 and advertising for the new tenants.

The landlords expressed the view that, as the tenant had never provided his notice to end the tenancy in writing, he had forfeited his right to claim on the deposit.

Analysis

Pursuant to section 44(1)(f) of the *Act*, I find that the tenancy ended on September 15, 2011 when new tenants moved into the rental unit. I further find that rent expressed as \$1,500 plus \$300 utilities, is the equivalent of \$1,800 per month's rent. Therefore, I find tenant owes the landlords one-half of that amount which is \$900.

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a security deposit or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the deposit(s).

In the present matter, I find that the landlord did retain all of the \$1,000 and did not make application as required under the *Act*. Therefore, I find that the landlords owe the tenant \$2,000 to double the deposit, setting a difference of \$1,100.

The tenant directed that he preferred to simply receive his full deposit back and he is, therefore, awarded a Monetary Order for \$1,000.

As the tenant breached the fixed term rental agreement, and as the landlords breached the *Act*, I make no award with respect to filing fees.

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order for **\$1,000.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord.

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 29, 2011.

Residential Tenancy Branch