



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and FF

Introduction

By application of November 21, 2011 the landlord seeks authorization to retain the tenant's security deposit against losses incurred a result of the tenant declining to proceed with the tenancy.

Issue(s) to be Decided

Is the landlord entitled to retain the security deposit as a result of the tenant's breach of the rental agreement?

Background and Evidence

After viewing the rental unit two days earlier, the tenant and landlord agreed on September 9, 2011 to enter into a tenancy agreement to begin on October 1, 2011. The tenant paid a security deposit of \$550 and rent was to be \$1,100 per month.

After entering into the agreement, the landlord said that he cancelled advertisements offering the unit for rent.

The landlord stated that tenant left him a telephone message on September 22, 2011 advising that she would not be proceeding with the tenancy. The landlord said that he resumed advertising on September 23, 2011 but he was not able to get a new tenant for October 2011.

The landlord submitted into evidence a copy of a letter from the tenant dated November 9, 2011, received on November 15, 2011, providing a forwarding address and requesting return of the deposit, resulting in the present application.

The landlord stated that as a result of the tenant's breach, he incurred a loss of \$1,100 for the October 2011 rent, \$186.82 in additional advertising costs and the \$50 filing fee for this proceeding, a total of \$,1386.82.

However, the landlord stated that he would absorb the larger portion of the loss and asked only for authorization to retain the security deposit in set off as he had originally intended before the tenant's letter precipitated the application.

The tenant stated that she had the change of heart out of concern that she would not have been able to sustain the costs of the rental unit because she had concern as to whether it would be ready on time.

Analysis

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

In the present matter, I find that the parties created a binding agreement when the security deposit was paid, and that the tenant is responsible for the landlord's losses which resulted from her breach of the agreement.

Therefore, as authorized by section 72(2)(b) of the *Act*, I hereby order that the landlord retain the tenant's security deposit in compensation for his losses as he has requested.

Conclusion

The landlord is authorized to retain the tenant's security deposit.

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: February 14, 2012.

Residential Tenancy Branch