



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for an order to retain the full security/pet deposit in the amount of \$1000.00, and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- On October 17, 2011, without even viewing the rental unit, the tenants signed a tenancy agreement to start their tenancy on November 1, 2011.
- On October 18, 2011 the tenant had a chance to view the house and afterwards seemed upset and was unsure if she wanted to live in the rental unit. I informed the tenant that if she was not interested I will keep advertising it and hopefully find someone for November 1, 2011.

- On October 21, 2011 the tenant said she overreacted apologized and said that they would move into the rental unit.
- The tenancy was to begin on November 1, 2011 however I had informed the tenants that if the previous tenants moved out earlier they could certainly move in earlier.
- The previous tenants had originally planned to move out earlier, however due to weather conditions and heavy rain their move got postponed to Monday October the 30th, however by that time the respondents had made up their mind not to move into the rental unit.
- As a result of the respondent's failure to move into the rental unit, they lost the full rental revenue for the month of November 2011 and therefore are requesting an order allowing them to keep the full security/pet deposit of \$1000.00 to cover that lost revenue.

The tenants testified that:

- They realize that their tenancy did not start until November 1, 2011, however the landlord had informed them that they would be allowed to move in earlier when the previous tenants moved out.
- During dealings with the landlord they felt she was acting unprofessional, and they felt they were somewhat in limbo never knowing when they would actually be able to move into the rental unit.
- Because of the landlords and professional dealings they became concerned and therefore on October 29, 2011 they left a voicemail expressing t their extreme disappointment with the way she handled things and informing the landlord that they would not be taking the rental.
- They also believe that the landlord misrepresented the rental property in regards to re-zoning and district drainage work that commenced the first week of November 2011, because the landlords knowingly omitted the information when I asked a question about when the subdivision was going to take place.

- The landlord had stated the subdivision would not likely happen until spring of 2012, with no mention that the drainage work would be starting the first week of November 2011.
- Therefore had they moved into the rental unit on November 1, 2011 their right to quiet enjoyment of the rental unit would be breached.
- They therefore do not believe that they should be held to the contract and be responsible for any rent for the month of November 2011.

Analysis

It is my decision that the respondents are liable for their full rental revenue for the month of November 2011.

The respondents signed a tenancy agreement and agreed to pay \$1000.00 per month starting November 1, 2011.

The tenants chose to back out of that tenancy agreement without giving the proper one month Notice to End Tenancy as required by the Residential Tenancy Act.

The tenants argued that there was a breach of the tenancy agreement; however it is my finding that I do not accept that argument.

First of all the tenants chose to vacate the rental unit prior to becoming aware of the alleged breach.

Secondly, I am not convinced that the landlord knowingly misled the tenants with regards to the subdivision of the nearby property and the district of Mission drainage work it was to take place.

The tenants were understandably frustrated over not being able to move into the rental unit as early as they desired, however the landlord had little control over the situation as the previous tenants had the right to stay in the rental unit until the end of October 2011, and officially the respondents tenancy did not start until November 1, 2011.

Conclusion

I allow the landlords full claim of \$1000.00 for lost revenue for the month of November 2011, and \$50.00 for recovery of the filing fee. I therefore order that the landlord may retain the full security/pet deposit in the amount of \$1000.00 and I have issued a monetary order in the amount of \$50.00.

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 06, 2012.

Residential Tenancy Branch