



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, O

Introduction

This hearing dealt with an application by the landlord seeking a monetary order as compensation for damage or loss suffered under the Act, the regulations or the tenancy agreement and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy was to begin on or about February 1, 2012 however the tenant never moved in. Rent in the amount of \$675.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$337.50.

The landlord gave the following testimony; the tenant contacted the landlord on January 30, 2012 and wanted to move in as soon as possible, the landlord advised the tenant that she could move in on the evening of the 30th, the landlord had a phone conversation with the tenant later that day on the 30th where she was advised by the tenant that she would not be moving in as they had “started off on the wrong foot”, the landlord advised the tenant that she would be able to move in later that day but just needed to wait until the present tenant’s moved out, allowed the landlord to clean the

unit and shampoo the carpets and let them dry, the tenant never came to pick up the keys and never moved into the unit. The landlord is seeking the recovery of one month's loss revenue and the costs to advertise in the local paper.

The tenant gave the following testimony; the issue of the security deposit was dealt with in separate hearing before another Dispute Resolution Officer, had every intention to move in as agreed to with the landlord but was informed on the day of move in that the unit was not ready and would not be ready for two more weeks, the tenant has small children and had nowhere to go, the tenant had already rented a moving truck and hired a babysitter for the day to allow for the move, the tenant adamantly disputes the claims made by the landlord.

Analysis

As explained to the parties at the outset of the hearing the onus or burden of proof is on the party making the claim, in this case the landlord. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I will deal with the landlord's application as follows:

In regards to the security deposit, the matter has been dealt with in a separate hearing and does not require me to make any decision on it.

As for as the claim put forth by the landlord seeking the equivalent of one month's rent as compensation for loss revenue and the advertising costs incurred ; the landlord gave testimony during the hearing that was unclear and contradictory.

I asked the landlord on several occasions to clarify some details of the dates and times and each time the version of events would be different. With these inconsistencies I am unable to rely on the testimony of the landlord.

Due to the lack of any accompanying witnesses or documentation to support the landlord's position; I find the evidence presented by the landlord to be insufficient and unreliable.

I dismiss the landlords claim.

Conclusion

The landlord's application is dismissed in its entirety 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: August 03, 2012.

Residential Tenancy Branch