

DECISION

Dispute Codes: MNSD

Introduction

This is the Tenant's application for return of the security deposit.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing package by registered mail, sent September 19, 2012. The Tenant did not provide an explanation for the delay in serving the Landlord, but the Landlord was prepared to continue and did not wish an adjournment.

Issues to be Decided

- Is the Tenant entitled to return of the security deposit?

Background and Evidence

This tenancy was to begin on June 15, 2012. The parties signed a tenancy agreement on May 21, 2012, and a security deposit in the amount of \$980.00 was paid on that day.

The Landlord testified that on May 30, 2012, the Tenants told him that they would not be moving into the rental unit. The Tenants did not provide the Landlord with written notice to end the tenancy. There was no mutual agreement to end the tenancy.

The Tenant testified that she met the female Landlord on May 18, 2012, to view the rental unit. On May 21, 2012, she met again with the male Landlord. The Tenant stated that she was concerned about the toilet and the carpets and told the male Landlord that the Tenants were interested in renting the rental unit, but not certain. She stated that the male Landlord told her that if the Tenants wished to hold the rental unit, they would have to provide a security deposit.

The Tenant testified that she mailed the Landlords her forwarding address, by regular mail, in mid-August but she was not sure of the date. The Landlord stated that he did not receive the Tenants' forwarding address until he was served with the Notice of Hearing documents in mid September.

The Landlord stated that the Tenant gave verbal notice that the Tenants would not be moving in on May 30, 2012, and that she also gave notice by e-mail on May 31, 2012. He testified that he posted the rental unit on Craigslist on May 30, 2012 and showed it on June 2, 2012. The Landlord testified that the rental unit was re-rented for August 1, 2012, and that he had lost rental income for June and July, 2012.

The Tenant stated that she believed she had a “cooling off” period of 10 days under the contract to consider whether or not she wanted to rent the rental unit. She did not believe that a tenancy was created, even though she had signed a tenancy agreement and paid a security deposit. She stated that the Tenants did not agree that the Landlords could retain any of the security deposit.

Analysis

I find that a tenancy was formed on May 21, 2012, when the parties signed the tenancy agreement and the Tenants provided a security deposit. Section 44 of the Act provides the only ways a tenancy can end. The Act supersedes any consumer protection that may be in place under other legislation.

The Landlord has not made application against the security deposit and I find that the Tenants are entitled to return of the security deposit in the amount of **\$980.00**.

The Landlord provided testimony that suggested that he believed he has a claim for damages against the Tenants. I explained to the parties that I was only considering the application before me, the Tenant’s application. I advised both parties that although the security deposit is now extinguished, the Landlord retains the right to file an application for damages under Section 67 of the Act.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$980.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: November 19, 2012.

Residential Tenancy Branch