



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of his security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenant be awarded a Monetary Order

Background and Evidence

The Tenant submitted evidence which included, among other things, copies of: the tenancy agreement and a receipt for the \$500.00 payment towards the security deposit.

The Tenant submitted that another tenant showed him the duplex on June 5, 2012 and that he met with the Landlord at her residence and signed the tenancy agreement on June 12, 2012. The Tenant argued that the Landlord was to complete repairs to the kitchen counter and clean the unit before he took possession of the unit; however, when he attended on July 1, 2012 the unit was not cleaned so he told the Landlord he could not take the unit. He stated he had four children and could not move into a messy place and that the Landlord told him it was okay she would return his deposit. She has not returned his deposit which has caused him to file for this dispute.

The Landlord disputed the Tenant's testimony and stated that she never told the Tenant she would return his deposit. She also denied saying that they were going to renovate the unit. She argued that they had cleaned the duplex and it was ready for occupancy by June 25, 2012. She stated she told the Tenant he could move in early but he declined. When they attended the unit on July 1, 2012 to hand over the keys the Tenant told her that he was not going to move in because his previous landlord was not going to return his deposit.

The Tenant confirmed that he has not provided the Landlord his forwarding or new address, in writing.

The Landlord advised she has not made application to keep the deposit and that they lost a month's rent due to the Tenant not moving in as scheduled.

Analysis

When a party makes an application for the dispute resolution the burden of proof lies with the applicant. In this case the Tenant has the burden to prove his case for the return of his security deposit.

The Tenant has applied for the return of double the security deposit; however, the Tenant has not met the burden of proving that he gave the Landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution.

Therefore in the absence of any proof that a forwarding address in writing was given to the Landlord, it is my finding that, at the time that the Tenant applied for dispute resolution, the Landlord was under no obligation to return the security deposit and therefore this application is premature. I therefore dismiss this claim with leave to re-apply.

At the hearing the Tenant stated that the address on the application for dispute resolution is his current forwarding address; therefore the Landlord is now considered to have received the forwarding address in writing as of today November 26, 2012. The Landlord is now required to disburse the security deposit in accordance with section 38 of the Act.

Conclusion

I HEREBY DISMISS the Tenant's application, with 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: November 26, 2012.

Residential Tenancy Branch