



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on February 5, 2013. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy was to start on February 1, 2013 as a fixed term tenancy for 6 months. Rent was \$1,500.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit or deposit to hold the rental of \$500.00 on January 11, 2013.

The Landlord said the Tenants told him on January 21, 2013 that they were not moving into the rental unit. The Landlord continued to say that he was unable to rent the unit until February 15, 2013 so he has lost rental income of \$750.00 which he believes the Tenants are responsible for. Further the Landlord said that he is amending their application to just retain the Tenants' security deposit of \$500.00 as full settlement of the unpaid rent.

The Tenant said they paid the deposit of \$500.00 on about January 11, 2013, but changed their minds about renting the unit as they believed the Landlord was phoning them too often and this could be a problem if they moved into the rental unit. The Tenant said they felt like the Landlord was harassing them. The Landlord said he was phoning the Tenants to make arrangements to complete and sign the tenancy agreement.

The Tenant continued to say they did not move into the rental unit and they requested the Landlord return their deposit of \$500.00.

Analysis

Section 16 of the Act says the rights and obligation of a landlord and a tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Further a tenancy agreement is deemed to be entered into when money is exchanged to support or confirm the tenancy agreement.

In addition section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

I find a tenancy agreement was entered into on January 11, 2013 when the Tenants paid the Landlord \$500.00 to hold the unit or as a partial security deposit. Consequently as the Tenants did not give the Landlords proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent; I find the Tenants are responsible for the rent of \$750.00 for the first half of the month of February, 2013. But as the Landlord found new tenants on February 15, 2013 and the Landlord has amended his application to only retain the Tenants' deposit of \$500.00 as full settlement of the dispute, I order the Landlord to retain the Tenants' deposit of \$500.00 as full settlement of the dispute.

Conclusion

I order the Landlord to retain the Tenants' deposit of \$500.00 as full settlement of the dispute and application.

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: April 29, 2013

Residential Tenancy Branch

