



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

Some documentary evidence and written arguments have 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 decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The landlord's application is a request for a monetary Order for \$1890.00, a request for recovery of her \$50.00 filing fee, and a request to retain the full security/pet deposit of \$945.00 towards the claim.

The tenant's application is a request for an Order for return of the security/pet deposit totaling \$945.00, and a request for recovery of his \$50.00 filing fee.

Background and Evidence

Both landlord and the tenant agree that the tenant signed a one-year fixed term tenancy agreement that was to begin on February 1, 2013, and that a security deposit of \$472.50, and a pet deposit of \$472.50 were paid on December 18, 2013.

Both the landlord and the tenant also agree that a move in inspection was done on January 29, and the keys were returned to the office on January 30, 2013.

The landlord testified that:

- After receiving the keys the tenant decided the rental unit was too small, and therefore he inform them that he would not be moving into the rental unit and he return the keys on January 30, 2013.
- They attempted to re-rent the unit but were unable to do so until April of 2013 and therefore they lost the rental revenue for the months of February 2013 and March 2013.
- They are therefore requesting an Order that the tenant be held liable for that lost rental revenue.

The tenant testified that:

- Basically what the landlord stated is true, he did rent the unit for February 1, 2013, however after receiving the keys he realized that the unit was too small.
- Also while he was in the rental unit, measuring to see if his furniture would fit, he noticed a musty/moldy smell and suffered some allergic reactions.
- He also noticed some loud partying next door and he cannot live in a place where it's noisy as he has to work.
- He therefore decided not to rent the unit and returned the keys to the landlord.
- He did not live in the rental unit for even one day and therefore believes his full security deposit and pet deposit should be returned.
- He also believes that the tenancy agreement is unenforceable, as the landlord failed to record on the agreement the fact that he paid a pet deposit.

Analysis

It is my finding that the tenant is liable for the lost rental revenue for the months of February 2013 and March 2013, as the tenant did not give the required notice to end tenancy.

Further the tenant had signed a one-year fixed term tenancy agreement and therefore the tenant is liable for any lost rental revenue that results from his breach of that tenancy agreement. It's my finding that failure to record the pet deposit on the agreement does not void the agreement.

The tenant claims that there was a musty smell and loud partying noises at the rental unit, however he has provided no evidence in support of that claim and therefore it's my finding that the tenant did not have grounds to end the tenancy.

Conclusion

The tenant's application is dismissed without leave to reapply.

I have allowed the landlords full claim of \$1940.00, and I therefore Order that the landlord may retain the full security/pet deposit totaling \$945.00, and I've issued a monetary Order in the amount of \$995.00.

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: May 07, 2013

Residential Tenancy Branch

