



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 8580 OAK STREET APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNSD, MNR, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, and the filing fee. The tenant applied for a monetary order for the return of the security deposit and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income and the filing fee? Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

On May 25, 2013, the tenant paid a security deposit of \$700.00 and filled out an application for tenancy with a desired start of tenancy date of July 01, 2013. The tenant testified in his written submission and during the hearing that he and his family did not have a place to stay and were in need of a home as soon as possible. The landlord stated that the unit needed some work and that he informed the tenant that upon completion the tenant could move in.

The landlord stated that he dealt mainly with the female tenant and on May 27, 2013 he called her to let her know that the suite was ready for occupancy on June 01. The male tenant, who attended the hearing alone, stated that the landlord did not call them as he stated, but it was the female tenant who initiated contact to inform the landlord that they were no longer interested in the rental unit.

The tenant filed copies of email correspondence between the two parties dated May 30, 2013. In these emails, the landlord asked for confirmation that the tenant will not be moving in on June 01, 2013, so that he could start looking for another tenant. The tenant replied confirming the same and requested for the return of the security deposit.

The landlord advertised the availability of the rental unit immediately and a tenant was found for June 18, 2013.

At the end of the hearing the tenant requested a change of address and stated that he had moved into this new address on June 01, 2013. The tenant also stated that he entered into an agreement for this unit on June 01 and moved in on the same day.

Analysis

Landlord's application:

Section 16 of the *Residential Tenancy Act* states that the rights and obligations of a landlord and 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. The parties entered into a tenancy agreement on May 25, 2013 at which time the tenant paid the security deposit and therefore the rights and obligations of both parties took effect that date even though the tenant never moved in.

I now have to determine the start date of the tenancy. The testimony of both parties differed. The tenant stated on one hand that he needed accommodation immediately, yet on the other hand stated that the tenancy was due to start on July 01, 2013. The landlord stated that he informed the tenant that the tenancy would start upon completion of the work and the work was completed prior to June 01.

Based on the testimony of both parties and on a balance of probabilities, I find that it is more likely than not that the parties agreed that the start date of the tenancy was the date of completion of the work. The tenants were in dire need of a place to stay and were in a hotel at the time they paid the security deposit and therefore would have no reason to start the tenancy a month later. I accept the landlord's testimony that the rental unit was available for June 01 which is confirmed by the fact that after the tenants reneged on the agreement, the landlord advertised the unit and found a tenant for June 18.

If the tenants were in compliance with the agreement, they would have moved in on June 01 and the landlord would have not suffered a loss of income for part of June. Based on the testimony of the tenant who attended the hearing, I find that shortly after the security deposit was paid, the tenants found another rental unit which they preferred and decided to move into that unit, which they did on June 01, 2013.

The tenant pointed out that the landlord's application was for loss of income in July and he did not suffer a loss of income in July. The landlord's application states "*I am asking to keep \$700.00 for loss of rent and my time. Rent for July 2013*".

The landlord explained that he made application on June 12 at which time he did not have a tenant for June or July and for this reason he added "Rent for July 2013". The landlord confirmed that his intention at the time of application was to retain the security deposit towards the loss of income he would likely suffer in June and July.

The landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Based on the testimony of the landlord I find that he attempted to mitigate his losses by advertising and .was successful in finding a tenant for June 18. Since the landlord made efforts to mitigate his losses, I find that he is entitled to recover the loss that he suffered for the period of June 01 to June 18.

The landlord has applied to retain the security deposit of \$700.00, I allow the landlord to do so to offset his loss of income for part of June. Since the landlord has proven his claim he is entitled to the recovery of the filing fee in the amount of \$50.00. Overall the landlord has established a claim of **\$750.00**.

Tenants' application:

The tenants have not proven that they are entitled to the return of the security deposit and therefore must bear the cost of filing their own application.

I order that the landlord retain the security deposit of \$700.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$50.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for \$50.00.

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: September 17, 2013

Residential Tenancy Branch

