



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord and the tenant participated in the conference call hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The landlord and the tenant agreed that on April 20, 2013 the tenant paid the landlord a security deposit of \$1200 to hold the rental unit until the tenancy began on June 1, 2013. The tenant and the landlord did not enter into a written tenancy agreement. On May 5, 2013 the landlord informed the tenant that they would both have to meet with the landlord's accountant on the following week to go over the terms of the lease. On May 18, 2013 the tenant emailed the landlord to inform her that he would not be moving into the rental unit.

Landlord's Evidence

The landlord stated that on May 18, 2013, as soon as she knew that the tenant was not moving in, she began advertising to re-rent the unit. She was unable to rent the unit for June 2013, and she has claimed loss of revenue in the amount of \$2400 for that month.

The landlord submitted a copy of the tenant's May 18, 2013 email, in which the tenant wrote, in part, "Unfortunately everything from our end has fallen apart at the last second, and we will no longer be able to take your place." The landlord submitted that this email shows that it was the tenant's decision not to move in, and because he did not give sufficient notice, he is responsible for the lost revenue the landlord has claimed. In the hearing I asked the landlord what, at the time of taking the security deposit, she understood as being the terms of the tenancy agreement. The landlord stated that she and the tenant talked about possession on June 1, 2013, and she showed the tenant some storage space. The landlord wanted to discuss with the tenant what would be going into the storage area.

Tenant's Response

The tenant stated that his understanding of the terms of the tenancy agreement at the time of paying his security deposit was that that the landlord would be providing the tenant access to the storage space prior to June 1, 2013, so that the tenant could begin moving some of his possessions. The tenant believed that this was a material term of the tenancy agreement. The tenant stated that he asked the landlord for a copy of the lease or a note to confirm the tenancy, but the landlord did not provide one. Further, the tenant contacted the landlord eight times and asked for access to the storage, and he was ignored.

Analysis

Upon consideration of the evidence, I find that in this case no tenancy was formed. The landlord's evidence was that the terms of the lease would be determined when the tenant and the landlord met with the landlord's accountant. When I asked the landlord her understanding of the terms of the tenancy agreement, she stated that she and the tenant "talked about possession on June 1st," and she did not give the tenant access to storage because she "wanted to discuss what would be going in" first. The landlord did not indicate that she and the tenant had determined what the monthly rent would be. The landlord's evidence was that the tenant paid the security deposit to "hold" the unit. For these reasons I find that the landlord and the tenant had not had a meeting of the minds as to the terms of the tenancy agreement, and no agreement was formed, either verbally or in writing. The landlord is therefore not entitled to the lost revenue claimed.

As the landlord's claim was not successful, she is not entitled to recovery of the filing fee for the cost of her application.

Conclusion

As no tenancy was formed, I do not have jurisdiction to hear this matter.

It is open to the respondent to pursue recovery of the \$1200 deposit through Small Claims 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: September 17, 2013

Residential Tenancy Branch

