



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to recover the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord and the landlord's agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and the witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The landlord's agent advised me there was an error in the number of the dispute address. The landlord's agent also advised that there was an error in the spelling of the landlord's agent's last name. No objections were raised to these errors being corrected and these errors have now been amended.

The tenant had applied for Dispute Resolution under the *Manufactured Home Park Tenancy Act*. However this application falls under the *Residential Tenancy Act* and this has also been amended.

Issue(s) to be Decided

Is the tenant entitled to have the security deposit returned?

Background and Evidence

The tenant testifies that she went to the park on April 01, 2013 as she was looking for a place to live. The landlords Husband BA took the tenant to show the tenant a home on the park that was vacant. This home was dirty and smoky. BA said the home was presently un-rentable due to its condition and that it would be cleaned. The tenant testifies that she agreed to go and see her daughter while the landlords cleaned the home and then would rent it when she got back.

The tenant testifies that the landlord CA said that the tenant must put down \$400.00 as a security deposit to hold the home in case anyone else wanted to rent it. The tenant testifies that she paid this sum to the landlord and obtained a receipt. The tenant testifies that she went to visit her daughter and when she came back on April 09, 2013 the landlord offered to let the tenant stay in the home but the tenant found the home still required cleaning and still smelt of smoke. The landlord lent the tenant a bed but overnight the smell of smoke bothered the tenant so she packed up her belongings the next day and moved out.

The tenant testifies that she told BA that the smell of smoke bothered her and that she was leaving. BA did bring some papers for the tenant to sign but the tenant testifies that she did not even look at them. The tenant testifies that as she did not sign any paperwork she did not enter into a tenancy agreement with the landlord. The tenant therefore seeks to recover the \$400.00 paid to hold the unit.

The landlord's agent CA disputes the tenants claim. The landlord's agent testifies that a tenancy was created on April 01, 2013 when the tenant paid a security deposit of \$400.00. There had been prior communication between the tenant and landlords agent

by e-mail when the tenant had contacted the landlords agent about renting a home on the park. When the tenant arrived at the park on April 01, 2013 it was because a home had become available and the tenant agreed to rent it.

The landlord's agent BA testifies that he took the tenant to see the home and the tenant liked what she saw but did have a concern about the smell of smoke on the poach. The landlord's agent testifies that the previous tenant had smoked on the porch. The landlord's agent testifies that he had told the tenant that the porch would be cleaned again to get rid of the smell.

The landlord's agent BA testifies that his wife explained to the tenant that if she wanted the home the tenant would have to pay a security deposit to hold the home in case other tenants wanted to rent it. The tenant said she was going to visit her daughter so the tenant paid \$400.00 and the landlord's agents removed the advert for the home from the paper. When the tenant returned on April 09, 2013 the porch had been disinfected to get rid of the smell of smoke. The landlord's agent and the landlord witness JD helped the tenant unpack her belongings from her SUV and the landlords agent loaned the tenant a blow up bed as the tenant said she would have to sleep on the floor. Papers were left with the tenant that evening for the tenant to sign.

The landlords agent BA testifies that the next morning the tenant came over with the papers but the tenant refused to sign them. The tenant left and proceeded to remove her belongings from the home. The landlords later found the keys to the home thrown on their driveway.

The landlord's Agent CA testifies that the home was advertised and re-rented for June 01, 2013. This meant the landlord lost two months' rent.

The landlord's agnt BA testifies that the home was not dirty and it did not smell of smoke when the tenant came back. This home had been recently renovated by the

landlord's agent BA and the landlords witness JD. The landlord had spent over \$20,000.00 renovating the home.

The landlord's agent testifies that they have provided photographs of the home showing the home is clean and newly renovated. The landlord's agent testifies that it appears that the tenant did not want to sign any paper work for the tenancy and only wanted to provide an emergency contact person. The tenant had told the landlord's agent that she needed her privacy. The tenant was required to sign a credit check form and tenancy agreement.

The landlords agent call there witness JD. The witness testifies that on April 09, 2013 he helped the tenant along with the landlord's agent BA to unload the tenants SUV of her belongings into the home. The tenant said she would have to sleep on the floor that night so BA lent the tenant a blow up bed. BA also helped the tenant set up her television. The tenant asked the witness to take her to the brick the next day. The witness testifies that when he arrived the next morning to help the tenant, the witness saw her SUV loaded again. At first the witness thought the tenant had got more belongings but then the tenant told the witness that she was leaving and was not going to sign any paperwork.

The witness testifies that he had helped BA renovate this home and the home was clean and everything was new inside the home. The witness testifies that he does smoke but could not smell smoke in the home or porch.

The tenant cross examines the witness and asks the witness to testify that when he came in and blew the bed up was the only space for the bed the front room as there was cleaning stuff there. The witness responds that the only thing there was a vacuum cleaner that the tenant had asked to borrow.

The tenant testifies that the owner said they don't rent to people without signing papers first but the landlords agents let the tenant stay there for one night without signing any

papers. The tenant testifies that the landlords pictures were taken after the tenant had moved out and the landlord's agents' had cleaned the home.

The landlord testifies that the pictures were taken after the home was renovated and before the tenant moved in. The landlord testifies that the reason the place was not rented between April 01 and April 09 was because the tenant had paid a security deposit.

The landlord testifies that they did not hear from the tenant again until July when they received these arbitration papers. The tenant has not provided a forwarding address and the phone number given by the tenant did not work.

The landlord's agent CA testifies that she received the tenant's paper work for this hearing on July 04, 2013 and that was the only time they had a forwarding address for the tenant.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness.

I find the tenant has not presented any evidence to show that a forwarding address in writing has been provided to the landlord. A tenant is required to provide a forwarding address in writing before a tenant applies to recover a security deposit. Once the landlord has received the tenants forwarding address in writing the landlord has 15 days from that date to either return the security deposit or file an application to keep it.

Therefore 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 states that the address on the application for dispute resolution is the present forwarding address; therefore the landlord(s) are now considered to have received the forwarding address in writing as of today October 03, 2013. The landlord has 15 days from this date to either return the security deposit or file an application to keep it.

I do however caution the tenant that having reviewed the tenant's evidence I find the tenant did enter into an agreement to rent this unit on April 01, 2013 when the tenant paid a security deposit to hold the unit. This effectively prevented the landlord from renting the unit to another tenant. When the tenant returned to the unit on April 09, 2013 the tenant refused to sign any paperwork to proceed with this tenancy and left the rental unit of her own free will.

Conclusion

The tenant's application is dismissed 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: October 03, 2013

Residential Tenancy Branch

