



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This is an application for a Monetary Order for \$8100.00, and a request for recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, digital evidence, photo evidence, and written arguments has 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

The issue is whether or not the applicants have established a monetary claim \$8100.00.

Background and Evidence

Applicants testified that:

- Landlord advertised the rental unit as being available for July 1, 2013, and therefore, to secure the unit, they agreed to rent the unit from July 1, 2013, even though they did not plan to move into the rental unit until September 2013.
- They paid a security deposit of \$900.00, and they paid first months rent of \$1800.00 in June of 2013.
- They paid the August 2013 rent of \$1800.00 on July 30, 2013.
- The September 2013 rent of \$1800.00 was paid on August 30, 2013.
- The October 2013 rent of \$1800.00 was paid on September 30, 2013.
- The landlord was fully aware that they would be arriving at the rental unit on September 24, 2013, and therefore the landlord had nearly 3 months to ensure that the rental unit was ready for them to occupy.
- Technically, since they paid rent from July 1, 2013, the rental unit should have been ready to occupy on July 1, 2013.
- They were therefore justifiably shocked to find that the unit was not yet ready when they arrived on September 24, 2013.
- The rental unit was very dirty, the rental unit at numerous items of furniture still in the rental unit, there was food in the refrigerator, there was alcohol in the cupboards, there were clothes in the bedroom closet, there were dishes in the cupboards, there was a wallet in the rental property, there were video games, and it appeared as though someone was still living in the rental property.
- When they point out the problems to the landlord, the landlord admitted that the rental unit was not ready, stated she had been overwhelmed, and put a lot of the blame on the cleaning company.

- Since the landlord had had almost 3 months to ensure the property was ready, and since it was not in a condition for them to occupy, they informed the landlords they would not be moving in and they found other accommodation.
- They are therefore requesting that the landlord return their full security deposit of \$900.00, and the full four months' rent of \$1800.00 per month

The respondent testified that:

- She does admit that there were numerous items left in the rental unit, and that the unit had not been properly cleaned, however she had paid professional cleaners to insure that the unit was ready and had not realized that they had not done a proper job.
- It had also been her understanding that the tenants wanted her to leave numerous pieces of furniture behind because they were going to be bringing a limited amount of furniture themselves from Winnipeg.
- She had fully intended for the rental unit to be ready for the tenants when they arrived, however she was somewhat overwhelmed and unable to get the rental unit ready for the tenants on time.
- Once she found out from the tenants that the unit was not ready for them to occupy, she made arrangements to have all the belongings removed, and have the rental unit properly cleaned as soon as possible and in fact it was completely ready to occupy by September 25, 2013.
- She believes it's the tenants that a breached the tenancy agreement by not moving into the rental property and that they should be liable for the full amount of rent that she has collected.
- She therefore believes that this full claim should be dismissed.

In response to the landlord's testimony the tenants testified that:

- They had never agreed to have the landlord leave numerous pieces of furniture behind for their use, they had had some discussions about the dining room table, however no agreement had ever been reached.

Analysis

First of all I will deal with the security deposit. The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on September 24, 2014 when the tenants inform the landlord that they would not be moving into the rental unit, and the landlord had a forwarding address in writing by at least by January 2014 when the notice of hearing was served on the landlord, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore even though the tenant has not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the tenant.

The tenants paid a security deposit of \$900.00, and therefore the landlord must pay \$1800.00

As far as the request for the return of the rent paid, it's my finding that the landlord must return all rent paid by the tenants.

This tenancy began on July 1, 2013, and therefore the landlord should have had the rental unit completely cleaned out and ready for the tenants to take occupancy on July 1, 2013.

Not only did the landlord not have the rental unit ready for the tenants by July 1, 2013, she did not have the unit ready almost 3 months later on September 24, 2013 even though she was fully aware that the tenants were moving in to the rental unit on that date.

The landlord has put a lot of the blame for the unit not being ready for occupancy on September 24, 2013, on the cleaning company whom she claims was supposed to have thoroughly clean the unit and removed all belongings, however it is my finding that this is not a legitimate excuse as the landlord had a responsibility to ensure that a proper job had been done.

Having arrived at the rental unit on September 24, 2013 and having found the rental unit not ready for occupancy, it's my finding that it was reasonable for the tenant's to look for and find alternate accommodations.

Further although the landlord claims of the tenants never told her that they were not moving into the rental unit, I accept the tenants testimony that that the they had informed the landlord that they would be not be moving in and would be looking for alternate accommodations.

Therefore the landlord must return four months' rent totaling \$7200.00.

Further as I have allowed the applicants full claim I also allow the request for recovery of the \$100.00 filing fee.

Therefore the total amount of the landlord must pay to the tenant is as follows:

Double \$900.00 security deposit	\$1800.00
Returned July 2013 rent	\$1800.00
Return August 2013 rent	\$1800.00
Return September 2013 rent	\$1800.00
Return October 2013 rent	\$1800.00
Filing fee	\$100.00
Total	\$9100.00

Conclusion

I have issued an order for the respondent to pay \$9100.00 to the applicant's.

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: February 24, 2014

Residential Tenancy Branch

