



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for return of the security deposit or pet damage deposit, and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other respecting the testimony and evidence provided.

During the course of the hearing the tenants advised that they had not received the evidentiary material of the landlord, however the landlord orally provided a tracking number assigned by Canada Post and testified that the evidentiary material was sent by registered mail to the tenants on July 29, 2015. I accept that testimony, and all evidence provided by both parties is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The first tenant testified that the parties had entered into an oral agreement for a month-to-month tenancy commencing March 1, 2015 for \$1,800.00 per month. They also agreed that the tenants could pay \$900.00 on the 1st of each month and the balance of \$900.00 on the 16th of each month. The tenants gave the landlord \$300.00 for a portion of a security deposit on February 22, 2015 and another \$400.00 on February 27, 2015. Copies of the receipts have been provided.

The tenant further testified that the landlord was supposed to make repairs to the bathroom due to mold. On March 1, 2015 her spouse went to the rental unit to pay the

\$900.00 for March's rent but the landlord wasn't okay with only receiving half even though he had previously agreed, and the tenant's spouse wasn't happy with the work the landlord did in the bathroom. The landlord only sanded the walls in the bathroom which will only cause mold to spread, and never cleaned it. The parties had agreed that the tenants would do the work for \$300.00 after they moved in, but the landlord had already started it. As a result, the tenants never moved into the rental unit and stayed in their current residence.

The tenant asked the landlord in a telephone conversation to return the security deposit but the landlord refused saying that the tenants were wasting his time. The landlord knew where the tenants lived and had even been to their residence, however no request for the security deposit was made in writing nor did the tenants provide a forwarding address in writing until the tenants served the landlord with the application for dispute resolution and notice of this hearing.

The second tenant testified that when he arrived at the rental unit on March 1, 2015 he had \$900.00 for half of March's rent but didn't give it to the landlord.

The landlord was going to pay the tenant \$300.00 to fix the bathroom, but instead the landlord sanded down the walls where mold was and then painted it. He didn't take out the 2 X 4s by the shower and it was leaking into the basement. Black mold also remained on the floor by the toilet. The tenant asked the landlord for the \$700.00 back, but the landlord refused saying that the tenant wasted his time.

The landlord testified that on February 22, 2015 the parties agreed to \$1,800.00 per month for rent and a security deposit in the amount of \$900.00 by March 1, 2015, and fix the bathroom, but they didn't show up. The second tenant showed up on March 4, 2015 and only had \$900.00 but the landlord wanted the full month's rent.

The landlord agrees that he collected \$700.00 from the tenants, but testified that it was for rent. The landlord later testified that it was to "hold" the house for the tenants rather than renting it to someone else.

Analysis

The landlord testified that the \$700.00 collected from the tenants was to "hold" the rental unit as opposed to renting it to other tenants. A landlord is only permitted to collect a security deposit or pet damage deposit, not an additional deposit to "hold" a rental unit, and I find that the \$700.00 is in fact a security deposit.

The *Residential Tenancy Act* states that a landlord must return a security deposit in full to a tenant or file an application for dispute resolution claiming against the deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the landlord must repay the tenant double. In this case, the tenancy never started and the landlord has made no claim for unpaid rent or loss of rental revenue. Further, the tenants did not provide the landlord with a forwarding address in writing until they served the landlord with the Tenant's Application for Dispute Resolution, which contains a forwarding address.

I hereby order the landlord to return the \$700.00 to the tenants within 15 days of today's date, failing which the tenants will be at liberty to apply for double.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$750.00.

This order is final and binding and may be enforced.

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: August 05, 2015

Residential Tenancy Branch

