



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenant. Both parties gave affirmed testimony.

Issues to be decided

Is the tenant entitled to the return of the security deposit?

Background and Evidence

On August 01, 2016, the tenant sent the landlord \$500.00 as a security deposit on the rental unit for a tenancy that was due to start on August 15, 2017. Later that day, the tenant realized that the rental unit was located in a different city and one that was at a distance from the area she intended to rent a unit in. The tenant informed the landlord that she was unable to move in as planned on August 15, 2016. The parties made efforts to find tenants for August 15, 2016 but were unsuccessful.

The landlord stated that he found new tenants for September 01, 2016 and since he had suffered a loss of income for 15 days, he kept the security deposit.

Analysis

Based on these facts and pursuant to section 16 of the *Residential Tenancy Act*, I find that the landlord and tenant had entered into a binding tenancy agreement when the tenant paid \$500.00 towards a security deposit that was accepted by the landlord. Section 16 of the *Act* states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the tenant entered into a tenancy agreement that was supposed to start on August 15, 2016. Due to a miscommunication, the tenant was unable to move in as planned. I find that by informing the landlord on August 01, 2016 that the tenant would not be renting the unit resulted in a loss of income to the landlord.

Residential Tenancy Policy Guideline #3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

In this case, the tenancy was due to start on August 15, 2016. The tenant made this application on August 17, 2016. Since the tenant made application prior to the 15 day legislated timeframe, the doubling provision of section 38 does not apply.

In this case the landlord found a tenant for September 01, 2016 and therefore incurred a loss of income in the amount of rent for 15 days. I find that the tenant is responsible for this loss of income and accordingly I allow the landlord to retain the security deposit.

Conclusion

The landlord may retain the security deposit of \$500.00.

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: February 22, 2017

Residential Tenancy Branch

