



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC MNSD OLC RPP

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act in compensation for the landlord ending the tenancy in violation of the Act. The amount of the rent being claimed is \$500. The tenant was also seeking the return of \$225.00 for the security deposit that was wrongfully withheld by the landlord and the return of the tenant's possessions confiscated by the landlord.

The tenant appeared but the Landlord/Respondent did not. The tenant supplied proof of service and the tracking number of Canada Post showed that the application had been mailed by registered mail on December 9, 2008 and was refused by the recipient on December 10, 2008. I find that the Hearing Notice and application was served on the landlord.

Issues to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit retained by the landlord and monetary compensation for loss of value to the tenancy, damages and moving costs.

The issues to be determined based on the testimony and the evidence are:

- Whether this tenancy arrangement falls within the jurisdiction of the Act

- Whether the tenant is entitled to a refund for rent paid for the month of November 2008
- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit and pet damage deposit?
 - Did the tenant furnish a forwarding address in writing to the landlord?
- Whether the landlord has possessions belonging to the tenant and should be ordered to return these

The tenant has the burden of proof to establish that the deposit existed, that the rent was paid and that the tenancy ended by the landlord contrary to the Act. The landlord has the burden of proof to show why a monetary order to refund the tenant's security should not be issued under the Act.

Background and Evidence

The tenant testified that the tenancy began on approximately two years ago and that the tenant paid a security deposit of \$250.00. The tenant testified that the tenant rented a unit from the owner of the house and shared a kitchen with the owner. The tenant's application indicated that rent of \$500.00 for the month of December had been paid to the landlord on November 19, 2008. However, according to the tenant, on November 23, 2008 the landlord initiated an argument and the tenant decided it would be best to go out to avoid the confrontation. The tenant's submission indicated that the landlord informed the tenant that he was not permitted to return and that the locks had been changed and that the landlord refused to return any of the tenant's funds. The tenant

testified that he has since been advised that the termination of the tenancy was in violation of the Act and the tenant is therefore seeking a monetary order for the \$500.00 rent overpaid for the month of December 2008, \$250.00 security deposit owed to the tenant under the Act and the return of the tenant's personal belongings that were confiscated by the landlord

Analysis

On the first issue of jurisdiction, I note that section 4 of the Act states that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. Accordingly, I find that I do not have the authority under the Act to consider this matter as it does not fall within the jurisdiction of the Residential Tenancy Act.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenancy in question is not a tenancy relationship covered by the Act and accordingly I must decline jurisdiction.

In light of the above, the tenant's application is dismissed without leave.

Dated: January 2009