



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The tenant has applied to have her security deposit returned as well as compensation for damage or loss under the Act. The landlord has applied for a monetary order for unpaid rent and compensation for damage under the Act.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid and lost rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

As well, it must be decided if the tenant is eligible to a monetary order for the return of double the amount of her security deposit and loss or damages under the *Act*, pursuant to Sections 38, 67, and 72 of the *Act*.

Preliminary Issue

This hearing was originally set for December 22, 2009 at which time the tenant provided testimony confirming service of evidence, however, the landlord indicated that the address used for the service was not his address and that he did not have an address to serve the tenant with any evidence.

Once service addresses were agreed upon, that hearing was adjourned. The hearing was reconvened on this date.

Background and Evidence

The tenancy began on April 1, 2009 with a monthly rent in the amount of \$695.00 due on the 1st of the month. The parties dispute if the tenancy was a month to month tenancy or a 1 year fixed term. The parties also dispute if a security deposit was paid.

The tenant has submitted the following documents into evidence:

- Handwritten notes regarding events during the tenancy including moving in, payment of rent, cleaning of the rental unit, signing of the tenancy agreement, copies of cancelled cheques and the ending of the tenancy;
- A receipt for a security deposit dated March 17, 2009 in the amount of \$347.00;
- Bank statements; and
- Telephone records showing calls in July 2009 to the landlord's phone.

The landlord has submitted the following:

- A copy of a rental application dated and signed by the tenant on March 17;
- A copy of a tenancy agreement and addendum for a one year fixed term tenancy beginning on April 1, 2009, with rent in the amount of \$695.00 due on the 1st of the month, stating a security deposit in the amount of \$347.00 was paid by March 17, 2009;
- Condition Inspection Report for the move in dated April 1, 2009 signed by the tenant;
- A copy of a document entitled "Standard Residential Tenancy/Lease Agreement" for a one year fixed term tenancy beginning on April 1, 2009 with rent in the amount of \$695.00 due on the 1st of the month, stating a security deposit in the amount of \$347.00 was paid by March, 2009;
- Copies of cheques from the tenant one marked NSF and one marked Payment Stopped; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated July 2, 2009 for rent that was due on July 1, 2009 and utilities requested on June 2, 2009.

In the hearing the landlord stated that the tenant had never paid a full month's rent during the entire time she resided in the rental unit. The landlord did not provide a tenant account ledger, nor was he able to establish in the hearing what rental payments were made or when.

The landlord identified specifically two cheques – one dated July 24, 2009 that was returned as insufficient funds when the landlord attempted to cash it in December, 2009 and one that was returned as a stop payment.

The landlord also stated the tenant did not pay a security deposit because that money was used for ½ month rent for April 2009. The landlord did not support this claim with any documentary evidence. The tenant testified that she paid her rent in full every month.

The landlord also asserted that the tenant had entered into a one year fixed term tenancy agreement as per his submitted documents. The tenant disputes signing a

fixed term tenancy agreement, she testified that she had signed a tenancy agreement for a month to month tenancy.

The tenant stated she had a copy of the tenancy agreement that she signed but had failed to submit it into evidence. The tenant alleges that her signature was “cut and pasted” from other documents on the lease agreements that the landlord submitted.

The tenant testified that she had an agreement with the landlord to end the tenancy at the end of July and had left her bank as the forwarding address to send her security deposit.

The tenant testified that she provided verbal notice on July 1, 2009 to end the tenancy and followed up with a written notice the same day. The landlord denies speaking with the tenant at all in July, 2009 about end the tenancy and denies the receipt of written notice to end the tenancy.

The tenant further stated that the landlord did not go take her security deposit there but rather went to the bank and starting asking the bank staff questions about the tenant.

The tenant also testified that when she moved the rental unit was extremely dirty and that she had requested compensation for cleaning from the landlord but she never had a response to her request.

Analysis

As the landlord was not able to provide any documented accounting of the tenant’s rent payment, I cannot find that the tenant had any outstanding rent owed to the landlord.

As to the tenancy agreement and addendum and the Standard Residential Tenancy/Lease Agreement I find the agreements to be invalid for the following reasons. First the tenant’s signature on the tenancy agreement obtained from the Residential Tenancy Branch appears to be altered in some way. Secondly, the landlord has not signed any of the agreements. Tenancy agreements and leases are only valid when both parties or their agents actually sign them.

As I cannot rely on the written tenancy agreements, I have to look to any verbal agreements and because both parties dispute whether the tenancy was a month to month or a fixed term tenancy, the burden of proof is on the landlord to establish if a fixed term tenancy agreement existed. I find the landlord has failed to accomplish this.

As I also find that the landlord has failed to provide any proof of outstanding rent, has provided no valid evidence of a written tenancy agreement, I find that his testimony that the tenant did not provide a written notice to end tenancy to be unreliable.

I also find that I cannot rely on his testimony to determine whether or not the cheques that were returned to him as insufficient funds or stop payment were accounted for in any corrected rental payments.

As there was no evidence submitted by the landlord as to the condition of the rental unit at the end of the tenancy, I cannot determine that any cleaning or lock changes were required.

As the tenant provided no evidence as to the condition of the rental unit at the start of the tenancy other than the signed move in condition inspection report that indicated that everything was fine, I cannot determine that she suffered any loss or damage requiring compensation.

As the tenant had provided a forwarding address at the end of her tenancy for her security deposit, I find the landlord failed to meet his obligations under Section 38 of the *Act* to return the security deposit or file an application for dispute resolution with 15 days of the end of the tenancy and receipt of the forwarding address.

Conclusion

Based on the above, I dismiss the landlord's application in its entirety, without leave to reapply.

Also based on the above, I find the tenant is entitled to monetary compensation for double the amount of the security deposit pursuant to Section 67 and therefore grant a monetary order in the amount of **\$694.00**.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: January 29, 2010.

Dispute Resolution Officer