



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenant to recover an alleged overpayment of rent.

Issues(s) to be Decided

1. Is the Tenant entitled to recover an alleged overpayment of rent from the Landlords?

Background and Evidence

This tenancy started on November 1, 2007. Rent is \$545.00 per month payable in advance on the 1st day of each month.

The Tenant claimed that she usually paid her rent by cheque and deposited it into a drop slot through the electrical room door in the rental property. Items deposited through the drop slot fall into a locked box bolted to the inside the electrical room door which could only be accessed by the Landlords and authorized service persons. The Tenant said that she ran out of cheques so on August 31, 2009, she paid her rent payment for September 2009 in cash and deposited it in the usual way in an envelope through the drop slot of the electrical room door. The Tenant provided a copy of an unidentified bank statement showing a withdrawal of funds approximately equivalent to the rent amount on August 31, 2009.

The Landlords said that on September 1, 2009 when they collected the rent payments from the lock box, the Tenant's payment was not there and as a result, they left her a note to that effect. The Tenant said the Landlords told her on September 2, 2009 that if she did not make a (further) payment, she would receive a 10 Day Notice to End Tenancy. Consequently, the Tenant said she borrowed funds and made a further rent payment by cheque on September 4, 2009.

The Tenant's witness gave evidence that he watched the Tenant deposit an envelope into the drop slot on August 31, 2009. The Tenant's witness also claimed that he investigated the drop slot and locked box on September 2, 2009 and based on his own ability to retrieve a deposited envelope he believed the Tenant's envelope could easily have been removed from the lock box using a hand or a grabbing tool because the box was only 12 inches deep. The Tenant and her witness also argued that the Landlords

had video surveillance in other parts of the rental property but not in the corridor by the electrical room.

The Landlords argued that it was their policy that only non-cash payments were to be deposited to the locked box in the electrical room. The Landlords said that cash payments were supposed to be made to the property manager who would issue a receipt at the time of payment. The Landlords said that each tenant would have been told about this policy at the beginning of their tenancy. The Tenant claimed that she was unaware of this policy and that the Landlords only sent a written notice of the policy to each tenant in the rental property after this incident.

The Landlords also argued that they took reasonable measures to ensure that the lock box was secure such as having a row of metal pins hanging over the slot to prevent items from being removed. The Landlords claimed that in the many years they had operated the rental property they had never had a rent payment stolen from the box and also claimed that there was no evidence that the lock box had not been tampered with on this occasion. The Tenant and her witness argued that their photographs of the drop slot taken on September 2, 2009 showed no evidence of metal pins hanging over the drop slot and that the Landlords probably added them after the Tenant's rent payment was stolen.

The Landlords further argued that the Tenant's alleged rent payment was suspicious in a number of respects. The Landlords claimed that the Tenant always paid by cheque which was deposited on the 1st of the month in a large brown envelope but on this occasion she claimed she made a cash payment, a day early and in a white envelope.

Analysis

In this matter, the Tenant has the burden of proof and must show (on a balance of probabilities) that she paid rent for September 2009 on August 31, 2009 as she has alleged. If the Tenant is successful, then the burden of proof will shift to the Landlords who must show that the Tenant did not pay her rent or paid her rent in a manner that was not authorized under the tenancy agreement.

Based on the documentary and witness evidence provided by the Tenant, I find on a balance of probabilities that she probably did pay her rent by cash on August 31, 2009 by depositing it in the slot of the Landlords' locked box. I do not find the Landlords' argument that the Tenant did not pay the rent because she always put her rent payment in a brown envelope (rather than a white one) to be persuasive especially when there was no other evidence to corroborate this allegation and the Tenant denied it.

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Furthermore, I find the Tenant's explanation that she paid her rent the day before it was due because she had to work on the 1st of the month to be reasonable.

The Landlords admitted that there was no term in the tenancy agreement requiring the Tenant to make cash payments to the property manager. I also find that there is insufficient evidence to corroborate the Landlords' claim that all of the tenants in the rental property knew or should have known about the policy to make rent payments in cash to the property manager. Consequently, I find that there is insufficient evidence that the Tenant knew or should have known that cash payments were not supposed to be put in the locked box.

Although the Landlords argued that the locked box was tamper proof because it had swinging metal pins hanging over the deposit slot, I note that in the Tenant's photograph taken on September 2, 2009, no swinging metal pins can be seen hanging over the slot even though bolts at the back of the box which secure it to the door are visible through the slot. Consequently, I find on a balance of probabilities that the Tenant's envelope containing her rent payment likely was stolen from the lock box through the door slot.

I find that once the Tenant's rent payment was deposited into the Landlord's lock box (in a manner that was not prohibited under the tenancy agreement), the Landlords then had possession of the rent payment and assumed any risk of loss of those funds. Consequently, I find that the Tenant made two payments of \$545.00 for September 2009 and is entitled to the return of one of them or to recover an overpayment of \$545.00. I order pursuant to s. 72 of the Act that the Tenant may deduct this amount from her next rent payment when it becomes due and payable to the Landlords.

Conclusion

The Tenant's application to recover an overpayment of rent in the amount of \$545.00 is granted. 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 18, 2010.

Dispute Resolution Officer