

DECISION

Dispute Codes MNDC, MNSD

Introduction

This matter dealt with an application by the Tenant for the return of her security deposit as well as for the return of her November 2009 rent payment.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit?
2. Is the Tenant entitled to the return of her rent payment for November 2009?

Background and Evidence

The parties agree that on or about October 21, 2009 the Tenant paid \$420.00 for November 2009 rent and \$210.00 for a security deposit.

The Tenant said that she was given the keys to the rental unit by one of the Landlords (C.S.) and told that she could move in early and pay rent for the period, October 21 – 31, 2009 when she started her new job. The Tenant said that later that day, an individual she knew (but did not invite on the rental property) damaged an exterior door of the rental property when she was not there. The Tenant said that when she returned the following day, another of the Landlords (P.S.) called her and told her that they did not want her there, to pack up her belongings and that he was coming to the rental property in an hour to take her wherever she wanted. Consequently, the Tenant said she left but that when she asked for her rent and security deposit payments returned, the Landlords told her that they would be using it to pay for the damage to the door.

The Landlords denied that there was a tenancy. The Landlords claimed that the Tenant was only given permission to move some belongings into the rental unit until they could do a criminal record check and they were unaware she was staying there. The Landlords also said they believed that the person who damaged the exterior door was in a relationship with the Tenant and therefore they argued that the Tenant was responsible for paying for a new door. The Landlords further claimed that the Tenant verbally agreed that they could use her rent payment and security deposit pay for repairs to the door.

Analysis

I find that the Parties entered into a tenancy agreement on or about October 21, 2009 and that at that time, the Landlords received a rent payment for the month of November

2009 and a security deposit and the Tenant was given the keys to the rental unit. Although the Landlords argued that the tenancy was not supposed to start until they completed a criminal record check, their actions of giving the Tenant the keys to the rental unit and telling her that she could move in her belongings are more consistent with the tenancy being in place. Consequently, I conclude that the tenancy did start on October 21, 2009.

Even if the Tenant was not entitled to occupy the rental unit on October 21, 2009 as the Landlords suggested (and I do not make that finding), section 16 of the Act says that “the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.” Consequently, I find that the Tenant is entitled to apply under the Act for the return of her rent payment and security deposit.

The Landlords alleged there was a verbal agreement with the Tenant that they could keep all or part of the rent payment and security deposit to repair the door. Consequently, the Landlords must show on a balance of probabilities there was such an agreement. However, the Tenant denied that she agreed to the Landlords keeping her rent and security deposit as she argued she had no other means to pay for rent for November 2009 and did not believe she was responsible for paying for the damages. Given the contradictory evidence of the Parties and in the absence of any additional evidence to resolve the contradiction, I find that the Landlord has not provided sufficient evidence to show that the Tenant agreed to forfeit her rent payment and security deposit. In any event, s. 38(4) of the Act says that a Landlord may only keep an amount from a security deposit if the Tenant agrees to it *in writing*.

As a result of the factors stated above, I find that the Landlords are not entitled to keep the Tenant's security deposit and November 2009 rent payment and I order them to return the amount of \$630.00 to the Tenant forthwith. If the Landlords feel the Tenant is responsible for damages, they may file a separate application for dispute resolution to make a claim for compensation however they are no longer entitled to keep the rent or security deposit to satisfy any damages.

Conclusion

A monetary order in the amount of **\$630.00** has been issued to the Tenant and a copy of the Order must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: March 22, 2010.

Dispute Resolution Officer