

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlord – MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant request a Monetary Order for double the security deposit and to recover the filing fee paid for her application. The landlord requests a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), Regulations or tenancy agreement and to recover the filing fee paid for this application.

Both parties served the other Party by registered mail with a copy of the Application and Notice of Hearing. I find that both Parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. The landlord confirms she received the tenants' evidence however the tenant states she did not receive the landlords' evidence which was also sent by registered mail. Canada Post tracking service shows that the mail was signed for by a person at the tenants address, A discussion took place about the contents of the landlords evidence and the tenant indicated that she was happy to proceed and for a decision to be made without sight of the landlords evidence.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to double her security deposit from the landlord?

- Is the landlord entitled to a Monetary Order for money owed in unpaid rent?

Background and Evidence

The tenant testifies that they made all the arrangements with the landlord over the telephone to rent her property. They had just sold their house and were not sure when it would all be settled and they could come to live in the rental property. The tenant claims she agreed to rent the property for October 01, 2009 not September 01, 2009. She claims she did have an arrangement with the landlord that if they arrived before the end of September that they could move in early. The tenant agrees that they did arrive on September 06, 2009 and stayed in hotels as they did not have their furniture at that time. The tenant claims that if they were intending to rent the property from September 01 they would have sent a rent cheque with their security deposit. The tenant has provided a duplicate of the security deposit which shows that she has written 'deposit for October 01, '09' on the cheque.

The tenant claims that the landlord gave them the keys on September 06 so they could have a look at the property but the tenant states the landlord knew they were not going to move in until their furniture arrived. The tenant claims that there was a bad smell in the property which caused a migraine and feelings of nausea. They asked the landlord if they could have an inspector look at the house but the landlord refused. The tenant states that the landlord had told them the house was completely renovated but when they arrived there was a fireplace but no fire, the doors did not lock, there were only minimum window coverings, there were problems with the windows, holes in a wall and a crack and mould on a bathroom mirror. The tenants decided not to move in and found alternative accommodation.

The tenant states that she sent the landlord a letter with her forwarding address and a request to return the security deposit on November 19, 2009. The landlord did not return their deposit within 15 days and the tenant requests double the security deposit.

The landlord testifies that the tenants decided to rent her property without first viewing it. They sent the landlord a cheque for the security deposit and told her they would be arriving from the East on either September, 06 or 07, 2009. The landlord states that the tenants signed a tenancy agreement and this agreement was for them to rent the property from September 01, 2009. The

tenants arrived on September 06, 2009 while the landlord was finishing up the renovations to the property. The landlord claims she showed the tenants around the house and they told her the house looked great. The landlord gave the tenants the keys and they went shopping for a bed. The landlord states that at this time the tenants belongings had not yet arrived and they put lawn chairs into the house.

The landlord claims she went away for a few days and when she returned on September 10, 2009 she had a voice message from the tenants which said their son did not like the school or the neighbourhood and they were looking for somewhere else to live. The landlord told them they may as well stay until the end of September and she would forgo the one months notice required. On the landlords return she found the tenants had left the property and put the keys in the mailbox. The landlord states that the tenants moved out before she had opportunity to do the move in condition inspection. The landlord also states that the tenants never informed her that any repairs or remedial work was required. The landlord seeks rent for September 2009 of \$1,550.00. She withdraws the remainder of her claim as she has since managed to re-rent the property from October 01, 2009.

The landlord testifies that her property was in good shape, there had never been a wood stove since she owned the property, the windows were in the process of being replaced and a bedroom was still being painted. The landlord also states that there was no mould on the mirror and any crack was already there and had been painted over. The landlord states that she believes that the date of October 01, 09 was added to the duplicate deposit cheque after the original had been sent to her.

The landlords witness states that she was present when the tenants viewed the property and was finishing off the painting in a bedroom. The witness states that the tenants seemed very positive about the house and even commented to her how good the bedroom looked. The witness states that she remembers the landlord telling the tenants that she had had quotes from a window company to come and replace the windows. The tenant asked the witness if she was present during this conversation. The witness replies that she did overhear this conversation between the landlord and tenants.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness; With regard to the landlords claim for unpaid rent for September, 2009. In this matter the landlord has the burden of proof and must show (beyond a reasonable doubt) when the tenancy was due to start. When a landlords' evidence is contradicted by the tenant, the landlord will need to provide additional corroborating evidence to satisfy the burden of proof. In this instance I find the landlord has not provided sufficient evidence that the tenancy was due to start on September 01, 2009.

I have reviewed the tenancy agreement between both Parties and find that this agreement does not state the date when the tenancy will start. The landlord has not provided a copy of the tenants' cheque for the security deposit to show that the date of October was added at a later time. Although the landlord has provided e-mail discussions these do not confirm that the tenancy agreement was due to start on September 01, 2009. The landlord argues that the tenants had the keys to the property on September 06, 2009; however, I do not find that this is sufficient enough to confirm that their tenancy started on that day as the tenants were still waiting for their furniture to arrive. The tenants' security deposit cheque clearly states that this is for October 01,'09 and not September 01, 2009. If in the event the Landlord had been unable to re-rent the property for October, 2009 when the tenants agree that the tenancy should have started the landlord would have been able to pursue the tenants at that time for a loss of rental income for October. However, as the landlord did re-rent the property for October 01, 2009 she has not suffered a loss of income for October, 2009. Consequently, in the absence of any corroborating evidence from the landlord to prove the tenancy started on September 01, 2009, I dismiss the landlords claim without leave to reapply.

As the landlord has been unsuccessful with her claim I find she must bear the cost of filing her own application.

With regards to the tenants claim for double the security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

I find that the landlord did receive the tenants forwarding address in writing by November 19, 2009. I also find that I prefer the tenants' evidence that a tenancy never started. As a result, the landlord had until December 04, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit or apply to keep it. Consequently, pursuant to section 38(6)(b) of the *Act*, the landlord must pay the tenant double the amount of the security deposit.

As the tenant has been successful with her claim I find she is entitled to recover the \$50.00 filing fee from the landlord pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount:

Double the security deposit	\$1,550.00
Total amount to be returned to the tenant	\$1,600.00

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,600.00**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The landlords' application is dismissed in its entirety without leave to reapply.

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: April 01, 2010.

Dispute Resolution Officer