

DECISION

Dispute Codes MNDC, SD

Introduction

This hearing was convened in response to an application filed by the tenant seeking a monetary award for compensation for damage and/or loss, for recovery of the security deposit. In total the tenant seeks \$9,825.00.

Both parties appeared at the hearing and gave evidence under oath.

Issues(s) to be Decided

Whether the tenant has met the burden of proving she is entitled to the Orders sought.

Summary of Background & Evidence

The evidence is that this tenancy began on March 1, 2008 and ended on March 17, 2008. The tenant says she was not provided with the pass code to the security alarm when she moved in. The tenant submits that the manager told her that the landlord told her that the previous tenants had changed the code and did not provide him with the code when they vacated. The tenant also submits that the manager attempted to repair the alarm but was unable to do so and advised her that he would have to hire a professional to make repairs.

The tenant submits that vagrants knocked at the windows and a break-in occurred at the rental unit on March 15, 2008 as a result of which, on March 16, 2008, she told the landlord she was vacating the premises because it was not safe. The tenant says she is a single mother with a child and requires a safe residence. The manager came over to speak with the tenant about her plans. The tenant says she does not speak English well so she had a friend interpret for them. Through the interpreter the tenant says she learned that the manager gave the alarm system pass code to someone named "Sunny"

on the day of move in. The tenant says she does not know anyone named Sunny. The tenant says that there were men from the moving and the cable company in the rental unit at move in. The tenant does not think that the landlord is responsible for the break-in but questions why the landlord would give the pass code to someone the tenant did not know. The tenant says that she was unprepared to move so quickly and she had to move until 3 a.m. on March 17 to vacate the rental unit. The tenant says the alarm was still under repair when she vacated.

The tenant claims the refund of her security deposit of \$1,325.00, refund of rent for March 2008 of \$2,650.00, moving costs of \$1,350.00 and the cost of replacing her computer stolen during the break-in in the sum of \$4,500.00. The tenant says she did not have insurance coverage on her goods for a total of \$9,825.00.

The landlord says this tenancy ended 2 years ago and he questions whether the tenant can bring this application now.

The landlord's manager says that they have no deficiencies with respect to the safety and security of the building. The manager submits that the tenant never asked for instructions on how to set the alarm.

The landlord submitted the "Cheque and Key Turnover Form" signed by the tenant on February 28, 2008 indicating that the tenant had received the keys to the building, the keys to her suite, the keys to the mailbox and the key fob remote. The landlord testified that "Sunny" arrived the rental unit on the tenant's move-in day with the keys to the building, the key to the tenant's apartment and the tenant's personal belongings. The landlord submits that they did not provide Sunny with any keys and that Sunny was a person the tenant entrusted with her keys and personal belongings.

The manager submits that on the day of the break-in the tenant left her blinds wide open and her window open. The landlord submits that pursuant to the Tenancy

Agreement they tenant was supposed to have insurance on her personal belongings but she never did supply the landlord with a copy of the Certificate of Insurance as required.

With respect to the return of the security deposit, the landlord says that the tenant never supplied them with her forwarding address and therefore the security deposit has never been returned to her.

Analysis

With respect to the timing of this claim, the Act says the tenant has 2 years to bring this claim. I determine that the cause of action arose on the day of the break-in. The evidence is that the break-in occurred on March 15, 2008, the tenant's application is filed March 12, 2010, therefore, it is filed within the proper time limits.

The tenant's testimony is contradictory. First she says the landlord advised her that he did not know the security code, later the tenant says she learned that the code was provided to a person she does not know named "Sunny", later she says the alarm was not functioning. In contrast to the tenant's testimony, the landlord's is clear. The landlord testified that there were no deficiencies with the security system and, if the tenant was having problems operating her alarm, she never advised the managers that she required instructions on how to operate it. Further, with respect to "Sunny", that Sunny was a person obviously entrusted by the tenant because he arrived at the rental unit with the tenant's keys to both to the building and to her suite, along with her personal goods. Overall I prefer the consistent evidence of the landlord and I find that the tenant has failed to prove that the landlord or his managers were negligent in any regard with respect to the break-in.

With respect to the tenant's security deposit the Act says the tenant must supply a forwarding address in writing to the landlord. The landlord must then either return the deposit or make an application with the Residential Tenancy Branch seeking to retain the deposit within 15 days of receipt of the written address. If the tenant does not

supply a forwarding address within one year of the end of the tenancy, the landlord may retain the deposit. The landlord says they never received a forwarding address from the tenant. The tenant has failed to provide sufficient evidence to show that she did supply her address to the landlord in writing. This tenancy ended over two years ago. I therefore dismiss the tenant's claim for recovery of the security deposit as the one year
