

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

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 landlord's application is a request to retain the full security deposit, plus a request that the respondent bear the \$50.00 cost of the filing fee which she paid for her application for dispute resolution.

The tenant's application is a request for a monetary order totalling \$1185.72.

Landlord's application

Decision and reasons

This is a request by the landlord to retain the full security deposit for lost rental revenue for the month of March 2010.

Both the landlord and tenant agree that this tenancy ended on February 28, 2010.

Both the landlord and tenant agree that the landlord received a forwarding address in writing on March 3, 2010.

The landlord filed her application for dispute resolution on March 19, 2010.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenants forwarding address in writing, the landlord is prohibited from making a claim against the security deposit and must pay the tenant double the amount of security deposit.

This tenancy ended on February 28, 2010, and the landlord had a forwarding address in writing by March 3, 2010, and therefore the landlord had to either return the deposit, or file for dispute resolution by March 18, 2010.

The landlord did not file for dispute resolution until March 19, 2010, and therefore she missed the 15 day deadline and, since there is no evidence to show that the tenant's right to return of the deposit has been extinguished, the landlord is prohibited from making a claim against the security deposit and is required to pay double the amount of the security deposit to the tenant.

Therefore at the time that the landlord filed her application for dispute resolution she was prohibited from doing so.

Tenant's application

Background and Evidence

The tenant testified that:

- The tenancy began on February 1, 2010 however she was unable to move into the rental unit until February 9, 2010 because the carpets were wet from carpet cleaning and were not dry until February 9, 2010.
- She was given an eviction notice on February 17, 2010, and complied with that notice vacating the rental unit on February 28, 2010.
- Even though she did not live in the rental unit in March 2010, the landlord cashed the \$620.00 March 2010 cheque that was received from the Ministry.
- She did still owe \$310.00 for the month of February 2010, however the landlord should have returned the remainder as she did not live in the rental unit in March 2010.
- When she moved into the rental unit she had cable TV included, however after an argument with the landlord the cable TV was shut off and the landlord did not turn it back on even after she requested that she do so.
- The landlord had a sign on the laundry room door that said that the laundry was not to be used, and therefore since laundry facilities were supposed to be included she wants compensation for loss of use.
- The landlord also failed to return her security deposit, and did not apply to keep the security deposit within the 15 day time limit and therefore she wants the landlord to pay her double her security deposit.

The applicant is therefore requesting a claim as follows:

Loss of use due to wet carpets, \$22.14 per day for eight days	\$177.12
Loss of cable TV, \$1.43 per day for 20 days	\$28.60
Loss of laundry facilities	\$50.00
Double the \$310.00 security deposit	\$620.00
Total	\$1185.72

The landlord testified that:

- The carpets in the rental unit were totally dry by February 2, 2010, and it was the tenant's choice to take longer to move in.
- She did cash the tenants March 2010 assistance cheque, because the tenant still owed \$310.00 for February 2010, and because she was unable to re-rent the unit in the month of March 2010 and therefore lost the full rental revenue for March as well.
- She did provide the tenant with cable TV service and at no time did she disconnect the service, and the tenant never informed her that the cable TV was not functioning.
- Laundry facilities were always available to the tenant and she did not put a note on the door stating that the facilities were not to be used.
- She has not returned the security deposit, because she lost the full March 2010 rent and was retaining the security deposit to cover that loss. One half of the March 2010 rent was covered by the tenant's assistance cheque and she wanted to keep the security deposit to cover the other half.

The landlord is therefore requesting that the tenant's full claim be dismissed.

Analysis

Loss of use due to wet carpets

It is my decision that the tenant has not shown that he she had a substantial loss of use of the rental unit, as it is basically just her word against that of the landlord. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

Return of one half of March 2010 assistance cheque

If a tenant is evicted for nonpayment of rent, and the landlord is unable to re-rent the unit for the month following the eviction, the tenant is liable for any lost rental revenue.

In this case the tenant was evicted in the month of February 2010, and the landlord was unable to re-rent the unit in the month of March 2010, and therefore lost the full rental revenue for that month.

The tenant is therefore liable for the lost rental revenue and I will not order the return of the \$310.00 that the landlord has applied it to the March 2010 rent.

Loss of cable TV

Again since it is just the tenant's word against that of the landlords, is my decision that the tenant has not met the burden of proving that the landlord has disconnected cable TV services.

I therefore will not allow the tenants claim for loss cable services.

Loss of use of laundry facilities

I also deny the tenants claim for loss of use of laundry facilities because again it is just her word against that of the landlord and therefore she has not met the burden of proving this claim.

Security deposit

I have already made a finding in the landlord's application that she must pay double the amount of the security deposit to the tenant, and therefore I allow this portion of the tenants claim.

Conclusion

Tenant's application

I have issued an order for the landlord to pay double the \$310.00 security deposit to the tenant for a total of \$620.00. The remainder the tenant's application is dismissed in full without leave to reapply.

Landlord's application

The landlord's application is dismissed in full 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: July 28, 2010.

Dispute Resolution Officer