



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties attended the hearing and had an opportunity to be heard.

Issues(s) to be Decided

Is the tenant entitled to a monetary order?

Summary of Background and Evidence

This tenancy began on August 28, 2008 and ended on or about May 20, 2010. The rent was \$1,600.00 due in advance on the first day of each month. A security deposit of \$800.00 was paid at the start of the tenancy. The tenancy came to an end as a result of a two month Notice to End Tenancy that was served on the tenant by the landlord on April 10, 2010. The landlord served the Notice because the residential property was being sold. The landlord has not returned any of the security deposit and has not filed an Application for Dispute Resolution claiming against the deposit.

Ms. E testified that she sent her forwarding address in writing in a letter together with her Application for Dispute Resolution to the landlord on June 2, 2010. Ms. E also testified that she paid the rent for May.

Ms. P testified that the tenant did not pay the rent for May and that the tenant's Application for Dispute Resolution was not accompanied by a separate letter containing her forwarding address. Ms. P also testified that she believed she was already out of

time for returning the security deposit when she received the tenant's Application and decided to leave the outcome of the matter until today's hearing. Ms. P also testified that the tenant's pets damaged the rental unit.

The tenant did not submit any documentary evidence in support of her claim.

Analysis

The tenant has made a total monetary claim of \$3,200.00. This claim is comprised of double the security deposit (\$1,600.00) and one month's rent (\$1,600.00) in connection with the landlord's two month Notice to End Tenancy. I shall deal with each portion of the claim in turn.

Double Security Deposit - Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlord has done neither.

However, the landlord has testified that she only received the tenant's forwarding address when she was served with the Application for Dispute Resolution and believed that the time for repayment had already passed. Further, although the tenant claims to have served the landlord with a letter containing the forwarding address, a copy of that letter was not submitted.

Given that the only documentary evidence that I have regarding the forwarding address is the Application for Dispute Resolution, I find that the tenant's application for return of double the deposit is premature and must be dismissed. The reason for this is that at the time the tenant filed her Application for Dispute Resolution, the tenant had not yet served the landlord with her forwarding address.

Section 51 Compensation – The tenant has claimed compensation under Section 51 of the Act which provides as follows:

(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

The testimony of the parties on this point is in direct contradiction. Ms. P testified that rent was not paid for May while Ms. E testified that rent was paid for May. As stated above, the tenant did not submit any documentary evidence showing that May's rent had, in fact been paid.

Given the contradiction in the testimony of the parties on this point and the fact that the burden of proving this claim lies with the tenant, I find that there is insufficient evidence in support of the tenant's claim for compensation under Section 51.

Conclusion

Based on the above, I hereby dismiss the tenant's claim for double the security deposit as premature ***with liberty to reapply***. I further dismiss the tenant's claim for Section 51 compensation ***without liberty to reapply***.

Based on this outcome I further dismiss the tenant's request to recover her filing fee from the landlord.

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: October 19, 2010.

Dispute Resolution Officer