



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

Landlord: MNSD, MNDC, FF
Tenant: MNSD, O

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for return the security deposit.

The parties attended the conference call hearing and each called a witness. The parties and their witnesses each gave affirmed testimony and the parties were given the opportunity to cross examine each other and each other's witnesses on their testimony.

All information provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to recovery of the security deposit or double the base amount of the security deposit?

Background and Evidence

This month-to-month tenancy began on September 1, 2010. The tenant moved out on October 2, 2010. Rent in the amount of \$375.00 was payable in advance on the 1st day of each month. The rental unit is one room in a rooming house. No move-in condition inspection was completed, nor was a move-out condition inspection.

The landlord testified that the security deposit amount was \$187.50, but the tenant only paid \$25.00. At the outset of the tenancy, the landlord completed 4 forms: a shelter information form, a contract for immediate eviction for excessive alcohol or illegal activity, a form for the security deposit, and the tenancy agreement. She further testified that the security deposit form showed that the tenant was to pay \$25.00 per week toward the security deposit. Copies of the forms were not submitted in advance of the hearing however the landlord testified that the security deposit form had no written consequences if the tenant did not pay \$25.00 per week.

She further stated that the tenant paid the rent for September and October, 2010, but the tenant moved out on October 2, 2010 and asked for the October rent back. The landlord stated that she would not return the rent. She further testified that a number of small items, such as a kettle were missing from the room, and the landlord claimed \$60.00 for those items as well as \$40.00 for cleaning the room on the Landlord's Application for Dispute Resolution.

The tenant testified that he did not receive a copy of any of the forms, and he was told that if he didn't pay the \$25.00 per week every week, he would be immediately evicted. He paid the rent but did not pay the \$25.00 per week, and rather than wait to be evicted, he found another place to stay. He further testified that any items taken from the room were returned to the room.

The tenant's witness also testified that the tenant was told that he would be evicted if he did not pay the security deposit, and the tenant took that to mean an immediate eviction.

Analysis

The *Residential Tenancy Act* cannot be avoided, and any contract for provisions contrary to the *Act* is not enforceable.

Firstly, the landlord may give written notice to end a tenancy by giving notice to the tenant one month's notice on the day before rent is payable under the tenancy agreement. The landlord may only give notice to end the tenancy for one of the reasons described in Part 4 of the *Act*. One of the reasons specified, is that the tenant has failed to pay the security deposit within 30 days of the date it is required to be paid under the tenancy agreement. The landlord did not give the tenant 30 day's notice prior to the date rent was payable and therefore the tenant could not have been immediately evicted. Further, the agreement described by the landlord for immediate eviction for excessive alcohol or illegal activity is a contract outside the *Act* and is therefore of no effect.

I find that the tenant was not required to end the tenancy, but did so on his own voluntarily. Therefore, the tenant's application for return of his rent money for the month of October cannot be awarded.

I also find that the landlord has failed to establish the missing items, or that the tenant left the room in a state beyond normal wear and tear. Therefore, the landlord's application for a monetary order must be dismissed. In addition, I find that the landlord has failed to establish that the landlord ought to retain the security deposit.

The *Act* states that if the landlord does not repay the security deposit or make an application for dispute resolution claiming against the security deposit within 15 days of receiving the tenant's forwarding address in writing, the landlord must return double the amount of the security deposit. I further find that the tenant provided his forwarding address to the landlord on the Tenant's Application for Dispute Resolution which was filed on October 4, 2010, but I have no evidence before me when the landlord received that application.

Conclusion

For the reasons set out above, the tenant's application for return of the security deposit is hereby awarded at \$25.00. I grant the tenant an order under Section 67 of the *Residential Tenancy Act* for that amount.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The landlord's application to retain the security deposit in partial satisfaction of the claim is hereby dismissed without leave to reapply.

Since the landlord's application has been dismissed, I decline to order that the landlord recover the filing fee from the tenant for the cost of this application.

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: November 15, 2010.

Dispute Resolution Officer