



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR MNSD FF
 MNDC

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for unpaid utilities, to keep the security deposit, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the Act, sent via registered mail on July 16, 2010. The Tenant confirmed receipt of the Landlord's hearing documents and evidence.

Service of the hearing documents by the Tenant to the Landlord's Agent was done in person on July 7, 2010 when the Tenant placed the documents in the Agent's mailbox after the Agent's refused to answer the door. The Agent confirmed receipt of the Tenant's hearing documents. The Tenant provided testimony that she did not submit documentary evidence in support of her claim.

The Tenant and the Landlord's Agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Tenant proven she suffered a loss to her tenancy?
2. Has the Landlord proven the Tenant has failed to pay all of the utilities?

Background and Evidence

I heard undisputed testimony that the parties entered into a written month to month tenancy agreement effective March 1, 2010. Rent was payable on the first of each month in the amount of \$1,300.00. The tenancy ended when the Tenant vacated the rental unit at the end of June 2010. The Landlord's Agent paid the Tenant \$521.00 cash on July 1, 2010 for partial return of the security deposit.

The Tenant testified that she initially paid \$650.00 cash towards her security deposit and that she received a written receipt for this deposit. However at the end of the tenancy the Agent's wife demanded to see the receipt and when the Tenant gave it to her to view the Agent's wife refused to return the receipt. She stated that when her son moved in with her another payment of approximately \$200.00 was paid to the Landlord from Income Assistance towards the security deposit. The Tenant confirmed she had been paying 45% of the utilities and she acknowledged that there would have been utility bills arriving after she moved out. She stated that \$521.00 was paid to her by the Agent as the return of the balance due of her security deposit after the Agent deducted \$129.00 from her \$650.00 deposit as payment towards the utilities for which the bills had not yet been received. She stated that she always paid the utilities in cash when the Agent collected for the bills and she was of the opinion that when she received the \$521.00 there was no outstanding amounts owed to the Agent. She argued that the Agent refused to give her receipts for rent payments or utility payments and he demanded that payments be made in cash.

The Tenant stated that she complained to the Agent because there were three separate rental units in the house and the other two units had numerous occupants and regular guests consuming more utilities than their share. The tenants and guests of these other units were always very noisy, they were involved in illegal activities, and were smoking drugs in and around her rental property. She stated that she has called the police on several occasions and complained to the Agent verbally on several occasions. She put her complaints in letters to the Agent on April 22, 2010, May 4, 2010, June 26, 2010, and July 7, 8, and 10, 2010. Her letters included her rights to be safe and her entitlement to enjoy peace and quiet in her rental unit after 11:00 p.m. and requests for the Agent to take action against the other tenants and their guests. She did not want to continue to pay the Landlord high utilities when these guests were using the laundry facilities, washing their clothes with hot water, and leaving the lights on all night long. Then on May 8, 2010 she returned home to find a women pacing in front of their gate holding a butcher knife. She confirmed she is seeking compensation of \$1,000.00 which represents a rebate of rent and some of the utilities she had to pay.

The Agent testified that the \$521.00 was given to the Tenant so she would leave the Agent to attend to the new tenants. He claimed the Agents never received any written letters from the Tenant however she did come over to complain to the Agent. The Agent did take action by speaking to the other tenants and told the Tenant to call the police in the future. The Agent states the Tenant was given receipts and argued the Tenant has never paid any money to the Agent for the cost of utilities. He states that when the bills would arrive the Agent would give the Tenant a copy of the bill and she promised to pay but never did. The Agent was not able to provide exact details of when copies of the bills were provided to the Tenant. When asked why the Agent refunded the amount of \$521.00 the Agent stated that they had not received all the bills yet for the utilities so an estimated amount was deducted. I then asked why the Agent would return money to the Tenant if she had failed to pay utilities throughout the entire tenancy. The Agent stated that the other Agent was dealing with the new tenants and wanted to get this Tenant to leave so they just agreed to give her the cash and she promised to pay the bills when they were received. I asked how the Agent was going to track the Tenant down after she moved and he said they had her phone number. I then asked why they waited until July 14, 2010 to file their application and he stated that they did not have the Tenant's address until after she filed her claim. He then argued that if the Tenant was so concerned about not getting receipts she should have paid by cheque or money order or made a hand written receipt for herself and requested the Agent to sign it.

In closing the Tenant stated that she had health concerns due to the smoke created when the other tenants and their guests would smoke crack. She also stated that the Agent's wife told her she was too much trouble by complaining all the time.

The Agent stated the Tenant's evidence is all hearsay and she did not provide any hard evidence. The Agent did investigate the Tenant's complaints and issued verbal warnings.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

I have carefully reviewed all of the testimony and evidence and based on a balance of probabilities I make the following findings:

Landlord's Application

Given the presence of disputed testimony, and considering the Agent's actions of returning a portion of the security deposit, after deducting an amount for the final utility bills that had not yet arrived, I find that on a balance of probabilities the Tenant had been paying the utilities each month. I have determined that a reasonable person would not have returned \$521.00 in cash to someone who owed them over \$700.00 in utilities and were moving. Based on the aforementioned I find the Agent and Tenant settled the final utilities on July 1, 2010 and the Tenant was returned the balance of her security deposit. Therefore I dismiss the Landlord's claim.

As the Landlord has not been successful with his claim I decline to award recovery of the filing fee.

Tenant's Application

The burden of proof to establish a loss to a tenancy of quiet enjoyment lies with the Tenant. The Tenant is required to prove a course of repeated or persistent threatening or intimidating behavior and prove that the Landlord failed to take reasonable steps to prevent such conduct. In this case I heard disputed testimony relating to if the Tenant issued written letters to the Agent where she allegedly requested the Agent put a stop to the alleged illegal activities and noise being created by the other tenants. The Agent acknowledged receipt of the verbal complaints from the Tenant and testified that they issued verbal warnings to the other tenants. In the absence of documentary evidence from the Tenant, and in the presence of disputed testimony, I find the Tenant has provided insufficient evidence to support her application and the claim is hereby dismissed.

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

I HEREBY DISMISS the Tenant's application, 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: November 19, 2010.

Dispute Resolution Officer