



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPL, MNSD, FF

Introduction

This hearing dealt with two applications as follows:

By the landlord: as an application for an Order of Possession and a Monetary Order to keep the security deposit.

By the tenant: as a cross application for a Monetary Order for the return of her security deposit, and to recover the filing fee associated with this application.

The tenant participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the landlords by way of registered mail sent on January 11th, 2011. The landlords did not call in to the conference call. Accordingly, the landlords' application is dismissed without leave to reapply and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a trailer in a manufactured home park. Pursuant to a written agreement, the month to month tenancy started on June 1st, 2010 and the monthly rent

of \$700.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$350.00.

The tenant testified that condition inspection reports were not completed at the start or the end of the tenancy. She stated that she received a 2 Month Notice to End Tenancy because the landlord's were separating and one of the spouses was going to move into her unit. In her documentary submissions, the tenant included a copy of the notice, showing that it was dated August 12th, 2010 and to take effect on October 12th, 2010. The tenant said that she moved out of the unit on September 30th, 2010.

The tenant stated that she has a carpet cleaning machine, and that she cleaned the carpets thoroughly before moving out. She stated that the although the landlord's spouse moved into the rental unit, she only stayed there for three months before moving back in with her husband. The tenant argued that the landlords' 2 Month Notice to End Tenancy was not served in good faith: on that basis she submitted an updated monetary claim as follows:

- Return of 2 months' rent:	\$1400.00
- Return of the security deposit:	\$ 350.00
- Filing fee:	\$ 50.00
- Total:	\$1800.00

Analysis

I accept the tenant's undisputed testimony that she served the landlords with the Notice of Dispute Resolution in a proper manner pursuant to the *Residential Tenancy Act*. I find that since the landlords' application for dispute resolution was also scheduled to be heard in conjunction with the tenant's application, they knew or ought to have had knowledge of the date scheduled for this hearing.

Section 49(8) of the Act provides that a tenant who wants to dispute a 2 Month Notice to End Tenancy must make an application for dispute resolution within 15 days after the date the tenant receives the notice. The tenant did not make an application within this timeframe and therefore I dismiss this portion of her claim.

Section 7 of the Act provides in part that the Applicant has a burden to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant. In this matter, the burden was on the landlords to prove that they had grounds to keep the security deposit. In the landlords' absence and based on the tenant's testimony, I find no evidence that the tenant did not comply with the Act. Accordingly, I find that the tenant is entitled to the return of her security deposit. Since her application had merit, I also find that the tenant is entitled to recover her filing fee.

Conclusion

Pursuant to Section 67 of the Act, I award the tenant a monetary order for the return of her \$350.00 security deposit, and to recover her \$50.00 filing fee for the sum of \$400.00. This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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: March 1st, 2011.

Residential Tenancy Branch