



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: *MNSD, MND, MNR, FF*

Introduction

This hearing dealt with applications by both the Landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim.

The tenant applied for a monetary order for the return of double her security deposit, for the return of overpaid rent and for compensation for loss under the Tenancy Agreement.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent and the filing fee? Is the landlord entitled to retain the security deposit? Is the tenant entitled to a monetary order for double the security deposit and compensation for loss under the tenancy agreement?

Background and Evidence

The landlord testified that the tenancy started on August 22, 2010 and ended on November 14, 2011. Both parties filed the tenancy agreement dated August 14, 2010 into evidence. The agreement shows rent in the amount of \$1,200.00 which is crossed out and rewritten as \$2,300.00. This amount is initialled by the tenant and the initials are crossed out. The landlord has added a note which explains that \$100.00 out of the \$2,300.00 would be applied to the utilities and would be adjusted at the end of the year.

The landlord explained that the rent for a portion of the home was \$1,200.00 and did not include the basement. The rent for the entire house was \$2,200.00. In her written submission, the tenant states that her intent was to rent the entire home and allow her daughter who is a single parent to move into the basement so that she could assist her daughter with raising her three grand children. The tenant adds that her eventual goal was to run a daycare in the home, which would help her get off social assistance.

Both parties also filed copies of receipts written by the landlord. One was dated August 14, 2010 in the amount of \$1,100.00 and states that it is the deposit in the amount of half a month's rent. The other receipt is dated August 20, 2010 for the amount of \$700.00 which is the prorated rent for August 22 to August 31, 2010.

The tenant also filed into evidence copies of two bank slips which are records of cash deposits made by her into the landlord's account. One is dated September 02, 2010 for the amount of \$2,300.00 and has a handwritten note that states "*Rent Sept 2010*". The other deposit slip is dated October 01, 2010 which shows that two deposits for a total of \$1,325.00 were made into the landlord's bank account. A handwritten note states "*rent Oct.2010*".

The landlord stated that the tenant found it difficult to pay rent and on October 06, 2010, she requested permission in writing, from the landlord, to allow her to sublet the basement suite. The landlord assisted the tenant with placing advertisements on line. The landlord stated that she wrote up the advertisements and forwarded them to the tenant's friend who assisted the tenant with showings. The tenant stated that she moved to the upstairs portion of the house on October 08, 2010, so that a tenant could be found for the basement.

On October 30, 2010, the tenant served a notice to end tenancy on the landlord, effective November 30, 2010. The landlord stated that the tenant did not pay full rent for October and did not pay any rent for November. The landlord is claiming the balance of \$525.00 for October and prorated rent for November in the amount of \$689.00.

In November, the basement was rented for \$700.00 and therefore the landlord prorated rent for November at the monthly rate of \$1,600.00. The landlord has also applied to retain the security deposit of \$1,100.00 towards the amount owed by the tenant. The landlord has agreed to waive the balance owed by the tenant after the security deposit is applied to the total money owed which includes the filing fee of \$50.00.

The tenant stated that she rented the entire house for \$1,200.00 as per the signed tenancy agreement. She stated that the landlord changed the rental amount and by doing so she committed fraud. The tenant agreed that she paid \$1,100.00 as a security deposit, \$700.00 for prorated rent for August and \$2,300.00 for rent for September. The tenant filed copies of bank slips and receipts as evidence. The tenant stated that, prorated rent for August at the rate of \$1,200.00, should have been \$386.00. However, the landlord prorated rent at the monthly rate of \$2,200.00 which resulted in an over payment of \$314.00.

The tenant stated that in September she paid \$2,300.00 instead of \$1,200.00 which resulted in an overpayment of \$1,100.00. In October 2010, the tenant paid \$1,325.00 which resulted in an overpayment of \$125.00. The tenant stated that she paid rent in excess of \$1,200.00 “*under duress*”.

The tenant stated that in September, the landlord asked for an additional \$650.00 for security deposit and the tenant filled out a form to be handed in to social services. The bottom of the form contains a rent receipt which is signed by the landlord. The tenant stated that she received a cheque from social services for \$650.00, cashed it and gave the cash to the landlord. The landlord denies having received cash and stated that she had signed the form so that the tenant could assist her daughter to receive funds from social assistance and allow her to share the rental unit. The tenant did not file any evidence of having paid the landlord \$650.00 as a second security deposit.

The tenant stated that she paid the landlord a total of \$1,100.00 plus \$650.00 as security deposit and since she did not receive the total amount of \$1,750.00 within 15 days of moving out, the landlord was obliged to return double this amount.

The tenant agreed that she started looking for a renter for the basement suite and that the landlord and the tenant's friend assisted her with placing advertisements and showing the unit to prospective tenants. The tenant stated that she recommended an Individual who was refused by the landlord. A renter for the basement was found for November 03, 2010. The landlord stated that the new renter was known to and recommended by the tenant's friend.

On November 03, 2010, the new tenant moved in and the landlord changed the locks to the basement. The tenant stated that she did not approve the new tenant nor did she agree to the changing of the locks. The tenant is claiming compensation in the amount of \$400.00 for loss of use of the basement for 10 days in November. The tenant is also claiming \$100.00 for being put “*under duress*” by the landlord through the tenancy.

The tenant is claiming the following:

1.	Overpaid rent for August	\$314.00
2.	Overpaid rent for September	\$1,100.00
3.	Overpaid rent for October	\$125.00
4.	Double security deposit	\$2,200.00
5.	Double additional security deposit	\$1,300.00
6.	Compensation for changing locks	\$400.00
7.	Compensation for “ <i>under duress</i> ”	\$100.00
	Total	\$5,539.00

Analysis

A key factor in the resolution of this dispute is to determine the amount of the monthly rent. The landlord stated that the monthly rent for the entire house was \$2,200.00 plus \$100.00 for utilities. The tenant disagreed and stated that the monthly rent for the entire house was \$1,200.00 and that the tenancy agreement was fraudulently altered.

Based on the testimony of both parties and the submissions filed into evidence, I find that the tenant rented the entire house and paid a security deposit of \$1,100.00 on the day that the tenancy agreement was entered into. She also paid prorated rent for August and full rent for September 2010. All these payments were made in keeping with a monthly rent of \$2,200.00 plus \$100.00 for utilities. I find the testimony of the landlord to be credible and supported by the evidence filed by both parties. Based on the monthly rent of \$2,200.00 plus \$100.00 for utilities, I find that the tenant has not overpaid rent for August, September or October 2010.

I also find that the tenant owes rent for October and November in the amounts of \$525.00 and \$689.00 respectively. Therefore, I find that the landlord has established her claim for a monetary order in the amount of \$1,214.00 which is the rent owed by the tenant. Since the landlord has proven her claim, she is also entitled to the recovery of the filing fee of \$50.00.

The tenant has applied for the return of double her security deposit. The tenant moved out on November 14, 2010 and the landlord applied to retain the security deposit on November 28, 2010. Therefore the landlord applied within the legislated time frame and is not obligated to return double the security deposit.

Regarding the amount of the security deposit that the landlord is holding, I find that other than the form from Social services, signed by the landlord, the tenant did not have any evidence to support her claim of having paid a second security deposit. Based on a balance of probabilities, I find it unlikely that the landlord would request a second security deposit, a month into the tenancy, when the tenant had already paid a security deposit and had also paid full rent for September. Accordingly, I prefer the landlord's testimony that she did not request or receive any monies towards an additional security deposit. I find that the landlord received a security deposit in the amount of \$1,100.00 on August 14, 2010, for which she gave the tenant a receipt.

Based on the above, I find that the tenant paid a security deposit of \$1,100.00 and is entitled to the return of the security deposit. The tenant is not entitled to the return of double the security deposit.

The tenant is claiming \$400.00 as compensation for loss of use of the basement when the landlord changed the locks. The tenant testified and filed a letter asking for permission to rent the basement and admitted that she was assisted by the landlord and the tenant's friend in the search for a renter. The tenant stated that she moved to the upper portion of the house on October 08, 2010. Based on the sworn testimony of both parties, I find that the tenant was looking for a renter for the basement as she was having difficulty paying rent for the whole house. She had already given notice to end the tenancy and had moved into the upper portion of the home and therefore was not deprived of the use of the basement. By finding a tenant for the basement, the landlord acted in the interest of the tenant and assisted her in paying rent. Therefore the tenant has not proven her entitlement to be compensated for the loss of use of the basement.

Duress is defined as "*the use of force or threats to make somebody do something*". The tenant stated that she overpaid rent under duress. Based on the testimony of both parties and the written submissions, I find that the tenant entered into the tenancy agreement and paid rent and the damage deposit in the amounts that is in keeping with a monthly rent of \$2,200.00 plus \$100.00 for utilities. The tenant personally deposited these amounts into the landlord's account. I find that the landlord did not use force or threats to make the tenant pay rent. Accordingly the tenant's application for \$100.00 as compensation for being put under duress is dismissed.

Overall, the landlord has established a claim of \$1,264.00 which consists of \$1,214.00 for outstanding rent and \$50.00 for the filing fee. I order that the landlord retain the security deposit of \$1,100.00 in partial satisfaction of the claim. The landlord has agreed to waive the balance of her entitlement of \$164.00.

Conclusion

The landlord may retain the entire security deposit in full satisfaction of her claim. The tenant's application is dismissed in its entirety.

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: April 11, 2011.

Residential Tenancy Branch