



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord applied for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit and recovery of the filing fee. The tenant applied for return of the security deposit and compensation for windows bars and a deadbolt. Both parties appeared at the hearing and were provided the opportunity to make submissions and to respond to the submissions of the other party.

I determined that the landlord's evidence package was not served upon the tenant and I did not accept or consider it.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for unpaid rent for the month of September 2009?
2. Is the tenant entitled to compensation for window bars and a deadbolt?
3. Should the security deposit be returned to the tenant or retained by the landlord?

Background and Evidence

The tenancy commenced March 1, 2007 and ended October 31, 2010. The tenant was required to pay rent of \$2,100.00 on the 1st day of every month for the entire house which included a basement suite. The tenant paid a \$1,050.00 security deposit.

The landlord is claiming compensation of \$2,100.00. The landlord submitted that in September 2009 the landlord gave the tenant's September rent cheque to her husband so that he could deposit it. The landlord's husband did not deposit the cheque and left it in his wallet when he left to work abroad. In June 2010 the landlord determined that the tenant's September 2009 rent cheque had not been deposited. The landlord also determined that the bank would not cash the cheque because it was "stale dated".

The landlord approached the tenant about the cheque and the tenant was initially of the belief the cheque had been cashed but the tenant advised she would cheque her bank records. The tenant discovered the cheque had not been cashed and requested the landlord recognize the improvements the tenant had made to the property during the tenancy or consider partial payments since the tenant no longer had the funds available.

The tenant submitted that the landlord had agreed to not pursue the unpaid rent in exchange for receipts for repairs made by the tenant for tax purposes. The tenant was of the position the receipts would be given upon receipt of the security deposit but since the security deposit was not returned she did not provide the receipts. The landlord acknowledged a conversation about being provided with receipts but stated that she changed her mind after learning the receipts would not be useful during an audit.

The tenant is seeking return of the security deposit and compensation for window bars and a deadbolt in the lower unit. The tenant indicated that she was a sort of intermediary between the occupants of the lower unit and the landlord. The lower suite tenant had window bars and a new deadbolt installed. The tenant could not provide receipts to show proof of purchase of these items and I dismissed this matter without further consideration.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the tenant fulfilled her obligation to provide the landlord with a rent cheque for the month of September 2010. Cheques are cashable for up to six months after they are written. Cheques written more than six months prior become "stale dated" and non-negotiable.

In the absence of evidence to the contrary, I am satisfied that the funds were available when the rent cheque was provided to the landlord. I do not find the tenant was obligated to remind the landlord to cash the rent cheque.

The landlord had six months to cash the cheque before it became stale-dated but failed to do so. I deny the landlord's claim for compensation on the basis the landlord did not do whatever was reasonable to minimize her damage or loss as required under section 7 of the Act. Therefore, the landlord's claim is dismissed.

As the landlord had already made an application with respect to the tenant's security deposit it was not necessary for the tenant to file her own application except for the amounts in excess of the security deposit. Since neither party was successful in establishing a claim for damage or loss under the Act, regulation or tenancy agreement I make no award for recovery of the filing fee.

As the landlord's claim has been dismissed, the landlord must return the tenant's security deposit to the tenant immediately. I provide the tenant with a Monetary Order in the amount of \$1,050.00 to serve upon the landlord and enforce in court if necessary.

Conclusion

The landlord is ordered to return \$1,050.00 to the tenant immediately and the remainder of the claims before me have been dismissed.

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 03, 2011.

Residential Tenancy Branch