



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an application by the tenant for recovery of the security deposit as well as the rent and propane amounts paid for January 2011. The tenant and the landlord both participated in the teleconference hearing.

Issue(s) to be Decided

Should the landlord be ordered to return the security deposit?
Is the tenant entitled to recovery of the rent and propane amounts paid for January 2011?

Background and Evidence

The tenancy began on November 1, 2010. There was no written tenancy agreement. The tenant and her son moved into the rental unit on November 1, 2010, and paid the landlord a security deposit of \$440.

The evidence of the tenant was as follows. On or about December 15, 2010, the tenant was absent from the rental unit, and anticipated returning to the unit by January 19, 2011. In the third week of December 2010 the tenant contacted the landlord and informed her that the tenant's son would be moving out, and that the tenant would carry on as the sole occupant. The tenant and the landlord renegotiated the rent, based on sole occupancy, to be \$800 per month. The tenant would also be paying \$75 toward the purchase of propane. On December 31, 2010, the tenant electronically transferred \$875 to the landlord, for payment of \$800 for rent and \$75 for propane for the month of January 2011.

On January 11, 2011 the tenant arrived at the rental unit to discover that the locks had been changed and all of her possessions had been removed from the unit by her son. The landlord had returned the security deposit to the tenant's son. The tenant has

applied for recovery of the security deposit as well recovery of the \$875 paid for rent and propane for January 2011.

The response of the landlord was as follows. The tenant's son was an occupant of the rental unit, and he paid most of the rent for December 2011. Most of the landlord's communication was with the tenant's son, as the tenant was not readily available and the landlord understood that the son was speaking with his mother on a daily basis. On January 1, 2011, the landlord spoke to the tenant's son, and told him that she would be giving the tenants notice that she would be occupying the unit in February. The tenant's son told the landlord that his mother was planning on moving out anyway. On January 9, 2011 the tenant's son removed all of his mother's belongings, and the landlord paid the security deposit back to the tenant's son.

On January 5, 2011, the tenant told the landlord she was arranging for payment of her February 2011 rent. At that time, the landlord became aware that the tenant did not know what the situation was with the landlord planning to move back into the rental unit, and she emailed the tenant to inform her.

Analysis

In considering all of the evidence, I find as follows. The tenant's son was an occupant of the rental unit, and he did not give notice to the landlord that he was moving out. Therefore, the landlord did not act contrary to the *Residential Tenancy Act* when she returned the security deposit to the tenant's son. I cannot therefore order that the landlord return the tenant's security deposit, and I dismiss that portion of the tenant's application.

The landlord illegally ended the tenancy when she changed the locks. The tenant had not given notice that she was moving out, and she had paid the rent and propane costs for January in anticipation of returning to the rental unit. As of January 5, 2011 the landlord was aware that the tenant believed the tenancy would continue into February. The landlord did not serve the tenant with a two month notice to end tenancy for landlord use. I therefore find that the tenant is entitled to return of the rent and propane costs she paid for January 2011, in the amount of \$875.

Conclusion

I grant the tenant a monetary order in the amount of \$875. This order may be filed in 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: April 4, 2011.

Residential Tenancy Branch