



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNDC, MNSD
 Landlord MNR, MNSD, FF

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 compensation for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of their security deposit and compensation for damage or loss under the Act, regulations or tenancy agreement.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on February 24, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on March 10, 2011, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Has the Tenant had a loss and if so how much?
2. Is the Tenant entitled to compensation for damage of loss and if so how much?
3. Is the Tenant entitled to recover all or part of her security deposit and pet deposit?

Background and Evidence

This tenancy started on December 1, 2010 as a month to month tenancy. Rent was \$1,250.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 on November 26, 2010 and a pet deposit of \$200.00 on December 9, 2010. The Tenant moved out of the rental unit on February 17, 2011.

The Landlord said the Tenant has unpaid rent of \$550.00 for February, 2011. She continued to say she issued a 10 day Notice to the Tenants on February 4, 2011 and the Tenants moved out on February 17, 2011. The Landlord said a move in and move out condition inspection report was completed and signed by both the Landlord and Tenant and she submitted it with her evidence. The Landlord said she made this application as the Tenant did not agree to have the unpaid rent deducted from her security deposit.

The Tenant said she agreed that there is \$550.00 of unpaid rent for February, 2011. She continued to say that they moved out of the unit because they believed they were having health issues as a result of the environment of the rental unit. The Tenant submitted a letter from the health inspector as evidence that the rental unit was causing them health issues. The Tenant said she is applying for double her security and pet deposit in the amount of $\$825.00 \times 2 = \$1,650.00$.

The Landlord said the rental unit is heated by electricity not forced air therefore the Tenant is responsible to open the windows to allow fresh air to come into the unit. The Landlord said she had the carpets professionally cleaned prior to the tenancy and she believes the Tenant may have caused the health issues by not opening the windows.

Analysis

Section 38 of the Act says a tenant may apply for double the security deposit and pet deposit if a landlord does not return the deposits or apply for dispute resolution within 15 days of the end to the tenancy and receiving the Tenant's forwarding address. In this situation the Landlord applied for dispute resolution on February 22, 2011 which is 5 days after the tenancy ended on February 17, 2011. I find the Tenant's claim for double the security deposit is dismissed without leave to reapply.

Section 26 (1) of the Act says a tenant must pay rent when rent is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the Tenant has not paid the unpaid rent for February, 2011 of \$550.00 and the Tenant does not have an order or the right to withhold the all or a portion of the rent. Consequently, I find that the Landlord is entitled to recover unpaid rent for February, 2011. As well as the Landlord has been successful in this matter I order the Landlord to recover the filing fee for this proceeding of \$50.00 from the Tenant. I grant the

Landlord's request to retain a portion of the Tenant's security and pet deposit in the amount of \$600.00 as full settlement of the Landlord's application.

Conclusion

The Tenants' application is dismissed without leave to reapply.

I Order the Landlord to retain a portion of the Tenant's security and pet deposits in the amount of \$600.00 total as full settlement of the Landlords' application.

I Order the Landlord to return the balance of the Tenant's security and pet deposit in the amount of $(\$825.00 - \$600.00 = \$225.00)$ \$225.00 forth with.

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*.

Residential Tenancy Branch