



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to the tenant's application for dispute resolution seeking:

1. A monetary Order for the cost of emergency repairs;
2. A monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
3. A monetary Order for the return of all or part of the pet damage deposit or security deposit;
4. An Order to recover the filing fee for the cost of this application.

In total the tenant seeks \$3,900.00.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to the Orders sought?

Background and Evidence

In her application for dispute resolution the tenant states that the landlord misrepresented this apartment to her. The tenant says the landlord assured her the suites surrounding her own suite were occupied by only non-smokers however once she moved in she discovered this was not the case. As a result of the smokers in adjoining suites the tenant says she moved out of the rental unit while still paying rent. The tenant says the landlord has refused to return her rent or her security deposit. The tenant claims recovery of lost wages in the amount of \$1,625.00 and \$2,275.00 in other costs which sum also includes the \$550.00 security deposit paid October 15, 2010.

The landlord says that he is trying to make the building a non-smoking environment but under the *Residential Tenancy Act* he cannot simply evict all smokers. All he can only do is rent to non-smokers once units become available and he is doing this but the building still has smokers in it. The landlord says he explained this to the tenant and he never advised her she would be surrounded by non-smokers.

Analysis

The tenant supplied no evidence, testimonial, documentary or otherwise to support her claim for the cost of emergency repairs. That claim is therefore dismissed.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. In this case I find that the tenant has failed to show that the landlord was negligent or made any misrepresentations to her about the rental unit. Further, even if he did, the tenant has supplied no evidence to show that she notified the landlord of any breach of their agreement and allowed him time to rectify the situation. The tenant simply chose to vacate. Her claim for loss of wages is dismissed.

Finally, with respect to the tenant's claim for recovery of her security deposit, the tenant has not yet provided her forwarding address in writing to the landlord. The landlord is therefore under no obligation to return the deposit until that time. However, at the hearing of this matter it was clear that the landlord now has the tenant's forwarding address. I am making this decision on May 3, 2010. The decision will be mailed on May 3, 2010 and deemed received on May 6, 2010. The landlord therefore has 15 days from May 6, 2010 (that is by Saturday May 21, 2010) to return the deposit to the tenant or make his own application seeking to retain the deposit. Failing which the tenant may make her own application seeking recovery of the deposit under the provisions of Section 38 of the Act.

Conclusion

All of the tenant's applications are 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*.
