

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

There are applications filed by both parties. The Tenant has filed an application for a monetary order for the return of double the security deposit. The Landlord has filed an application for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave affirmed testimony.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the return of double the security deposit?
Is the Landlord entitled to a monetary order?

Background and Evidence

The Tenant states that she served the hearing documents on the Landlord by placing them in the Landlord's mail slot, but does not remember which date. The Landlord has stated that she served the hearing documents by registered mail on March 2, 2011 as shown in the submitted copy of the Canada Post print out of delivery confirmation. Neither party has disputed receiving the others hearing package. The Tenant has filed no evidence. The Landlord's evidence consisted of a 10 day notice to end tenancy for unpaid rent with the hearing package. The Tenant has confirmed receipt.

Both parties agreed that the Tenancy ended on January 1, 2011 and that the Tenant returned the keys to the unit on January 5, 2011 to the Landlord's father. The Tenant states that she dropped off a letter with her forwarding address in writing to the Landlord approximately two weeks after the keys were returned. The Landlord confirms receiving the letter, but was unsure of when it took place.

The Tenant claims that the security deposit of \$447.50 has not been returned by the Landlord as of the date of this hearing.

The Landlord claims that this Tenancy ended because the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent which was served by posting it on the rental unit door on December 3, 2010. The notice shows that the monthly rent of \$595.00 was unpaid as of the date of the notice. The Tenant disputes that she never received the notice, but that she received a handwritten note at the end of December from the Landlord stating that rent was unpaid and that she must vacate the rental unit. The Tenant states that she complied with this hand written notice as she had not paid any rent by moving out at the beginning of January.

The Landlord has stated that she did not repay the security deposit because she had a verbal agreement with the Tenant to retain the security deposit in lieu of unpaid rent. The Tenant disputes this stating that she has never agreed to this.

The Landlord has made a claim of \$595.00 for unpaid rent based upon the 10 day notice to end tenancy for unpaid rent.

The Landlord has made a claim for theft and damages of \$15,000.00, but has provided no evidence to support her claim. The Landlord lists damages to a stove, walls, curtains and in her direct evidence damage to a door knob. The Landlord has provided no details or invoices for costs or estimates. The Landlord states that she has photographs, but has not submitted any into evidence. The Landlord has not completed a condition inspection report nor did she arrange to have one done at the end of tenancy.

Analysis

Based upon the affirmed testimony of both parties, I am satisfied that both have been properly served with the hearing package and evidence by each party.

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) **the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application for dispute resolution** claiming against the security deposit or pet damage deposit.

This Tenancy ended on January 5, 2011 when the keys were returned to the Landlord's father. No Condition Inspection report was completed by either party. Section 35 of the RTA states,

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

Section 36 of the RTA states,

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The Landlord did not file for dispute until March 2, 2011. I find that the Landlord has failed to comply with the Act. The Tenant has disputed the Landlord's claim stating that a verbal agreement existed that the Tenant would forfeit the security deposit in lieu of unpaid rent, the Landlord has provided no supporting evidence other than the direct testimony of her partner, K.B. I find that the Tenant is entitled to the return of double the security deposit of \$895.00.

Based upon the evidence provided by the Landlord and the Tenant's own direct testimony, I am satisfied that the Landlord has established a claim for unpaid rent of \$595.00. I prefer the evidence of the Landlord over that of the Tenant on a balance of probabilities that the Tenant was served the 10 day notice to end the tenancy on December 3, 2010 by posting on the door.

Without any supporting evidence from the Landlord, I find that the Landlord has failed to establish a claim for \$15,000.00 in theft and damages. The Landlord has not supplied any evidence or details to support her claim that any damages took place or that the Tenant was responsible and the details of costs associated to these damages. As such, I dismiss this portion of the Landlord's claim.

Both parties have been successful in their applications. The Tenant's application fee was waived. The Landlord shall be awarded the recovery of the \$100.00 filing fee.

I find in offsetting these awarded amounts ($\$895.00 - \$595.00 = \$300.00 - \$100.00 = \$200.00$) that the Tenant is entitled to a monetary order under section 67 for the balance due of \$200.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$200.00.

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: June 07, 2011.

Residential Tenancy Branch