



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of the security deposit. The hearing was originally held on March 3, 2011 with just the tenant in attendance. A decision was issued on March 10, 2011 in favour of the tenant. The landlord applied for a review of the decision and in a decision dated April 13, 2011, a new hearing was ordered. The new hearing was set for May 12, 2011 at which time the parties advised that they had not received all of the evidence from each other. The hearing was adjourned to June 7, 2011. Both parties were in attendance both on May 12 and June 7.

Issue to be Decided

Is the tenant entitled to the return of his security deposit?
Is the tenant entitled to a monetary order as claimed?

Background and Evidence

Most of the issues surrounding this tenancy were in dispute. The one issue upon which the parties agreed was that the tenant never took occupancy of the rental unit.

The tenant testified that he originally viewed the unit in September 2010 at which time he determined that it would not meet his needs. He stated that the landlord offered to renovate the unit and he stated that he agreed that he would take the unit when renovations were complete. The tenant met with the landlord on October 22 and testified that she told him the renovations would be completed by the end of October. The tenant claimed that on October 22, he paid the landlord \$1,000.00 in cash which represented a \$440.00 security deposit and \$560.00 for rent. The tenant produced a receipt of the same date which acknowledged payment of \$440.00 + \$560.00, the latter sum being identified as "part of rent." The tenant testified that he left the next day on a trip from which he returned on November 6. On November 7, the tenant testified that he attended at the rental unit to find that the kitchen renovations had been completed, although he disputed the adequacy of those renovations, but the bathroom had not yet

been renovated, painting had not been completed and the fireplace had not been repaired. The tenant stated that the landlord asked him to move in and stated that she would complete the renovations while he was in the unit. The tenant testified that he refused to move in and asked the landlord to refund the monies paid, which she agreed to do. The tenant further testified that on December 15, 2011 he sent his forwarding address in writing to the rental unit.

The landlord testified that she did not meet the tenant until October and that he had requested that she perform renovations. She stated that she received \$537.50 from the tenant on October 17, \$100.00 of which was rent and \$437.50 of which was a security deposit. She provided a receipt of that date for that amount. At the May 12 hearing, the landlord insisted that she had not issued a receipt on October 22. At the June 7 hearing she acknowledged that she had issued the October 22 receipt but she insisted that the tenant had altered the amount which had been paid. The landlord and her contractor, B.H., testified that the renovations had been fully completed by October 29 and that the unit was ready for occupancy on that date. The landlord also provided statements from other parties confirming that the suite was ready for occupancy on November 1. The landlord claimed that the tenant had said he would not be renting the suite because he would be working in a different city and because he was unhappy with the lack of available parking. The tenant denied this claim.

Analysis

First addressing the amount of the security deposit, I find it more likely than not that the tenant paid the landlord \$440.00 for a security deposit and \$560.00 in rent on October 22 as evidence by the receipt of that date. I have arrived at this conclusion because the landlord's inconsistency in first denying and then acknowledging having issued a receipt on that date has caused me to question her credibility. The tenant's testimony on the issue has been consistent throughout and I prefer his evidence to hers.

Section 38 of the Residential Tenancy Act provides that a landlord is not obligated to deal with the security deposit until the tenant has provided his forwarding address in writing. The tenant stated that he sent his forwarding address to the landlord at the rental unit, but there is no evidence that the landlord has ever used the rental unit as her address for service. I find that the landlord did not receive the tenant's forwarding address until she received the decision granting a review hearing. At the June 7 hearing the landlord advised that she chose not to make a claim against the deposit. The Act does not allow landlords to unilaterally decide to retain a deposit. Rather, they must either obtain the consent of the tenant or make an application for an order permitting them to retain it. In this case, the landlord has neither obtained consent nor

an order. I find that the tenant is entitled to recover the security deposit and I award him \$440.00. I note that the tenant waived a claim for double the security deposit.

I find that the tenant had a binding agreement with the landlord to rent the unit for the month of November. If the tenant believed that the landlord had failed to comply with a material term of the tenancy by failing to complete renovations in a timely manner, he had the responsibility under section 45(3) of the Act to advise her in writing and give her an opportunity to correct that breach. In the absence of such notification, I find that the landlord had no responsibility to return the \$560.00 in rent she received from the tenant. Accordingly I dismiss the claim for the return of rent.

I find that the tenant is entitled to recover the \$50.00 filing fee paid to bring his application.

Conclusion

The tenant has been awarded \$490.00. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial 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: June 07, 2011

Residential Tenancy Branch