

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

There are applications filed by both parties. The Landlord has applied for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or Tenancy Agreement, to keep all of the security deposit and recovery of the filing fee. The Tenant has applied for a monetary order for the return of double the security deposit and for money owed or compensation for damage or loss under the Act, regulation or Tenancy Agreement.

Both parties attended the hearing by conference call and gave testimony. Both parties have confirmed receipt of the notice of adjourned hearing from the Residential Tenancy Branch and receipt of one evidence package filed by each party.

Issue(s) to be Decided

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

Is the Tenant entitled to a monetary order for compensation?

Is the Landlord entitled to a monetary order for compensation?

Is the Landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this Tenancy ended on July 2, 2010 due to a fire at the rental address. Both parties also agreed that the monthly rent at the time was \$750.00 payable on the 1st of each month and a security deposit of \$375.00 is held by the Landlord.

The Tenant filed her claim for the return of double the security deposit on May 11, 2011. The Tenant states that the forwarding address in writing was given to the Landlord in a letter dated July 10, 2010 about 1 month after the fire by registered mail. The Landlord disputes that she never received it. The Tenant is unable to provide any evidence of service for this letter.

The Tenant is seeking to claim the July 2010 rent of \$750.00 that was paid due to the fire on July 2, 2010 rendering the house un-habitable. The Landlord confirms that the Tenant did pay the rent, but disputes that the Tenant is not entitled to it. The Landlord states that the fire was due to the Tenant's negligence. The Landlord has included a Surrey Fire Marshall's report which states, "Tenant in rear suite on main ground floor of house was cooking Tempura, left momentarily to the bathroom and returned to find the oil in the pan had ignited. She left the suite and called 911. Extensive Damage to kitchen area with smoke and heat damage to the entire suite." The Tenant has confirmed in her own testimony that the fire was her fault, but that it was an accident. The Landlord states that another basement suite and her own unit upstairs were rendered unlivable. The Tenant is also seeking \$2,750.00 for lost property which she states was the result of the Landlord allowing people into the rental unit to take personal items away. The Landlord disputes this stating that after the fire, the only people onsite was the fire marshall and the restoration/insurance company representatives as the house was boarded up. The Tenant states that the Landlord gave access to other people to remove her personal property, but has provided no evidence of such. The Landlord states that almost all property in the house was fire, smoke or water damaged and was removed by the Fire Restoration/Insurance Representatives.

The Landlord has made a claim against the \$375.00 security deposit on August 15, 2011. The Landlord is seeking recovery of the \$1,000.00 insurance deductible because of the fire caused by the Tenant.

Analysis

I am satisfied that both parties have attended the hearing and have made detailed reference to the evidence submitted that each has been properly served with the notice of hearing and evidence documents on file.

I find based upon the evidence submitted and direct testimony of both parties that the Tenant has failed to establish a claim for the return of double the security deposit. The Tenant was unable to provide any evidence of service for the forwarding address in writing to the Landlord. The Landlord filed for dispute to retain the security deposit on August 15, 2011 because she states that the Tenant's forwarding address in writing was unknown until she received the Tenant's application. As such, this portion of the Tenant's application is dismissed.

I find that Tenant's claim for lost property totalling \$2,750.00 has not been established. The Tenant's claim is in dispute by the Landlord and the Tenant has failed to provide

any evidence to support this claim that the Landlord was negligent or responsible. This portion of the Tenant's claim is dismissed.

As for the Tenant's claim for the recovery of the July 2010 rent of \$750.00. The fire, although an accident, occurred as a result of the negligence of the Tenant as shown by fire marshall's report and through the Tenant's own direct testimony admitting fault. I dismiss this portion of the Tenant's claim as the Tenant has not proven any entitlement.

I am satisfied based upon the evidence submitted by the Landlord and through the Tenant's own testimony that the fire was caused by the Tenant. I find that the Landlord has proven an entitlement through the negligent actions of the Tenant. The Landlord has established a claim for the recovery of the \$1,000.00 insurance deductible.

As the Landlord has been successful in her application, I find that she is entitled to recovery of the \$50.00 filing fee. I order that the Landlord may retain the \$375.00 security deposit to offset the \$1,000.00 claim awarded to her. I grant the Landlord a monetary order under section 67 for the balance due of \$675.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$675.00.
The Landlord may retain the security deposit.

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: September 23, 2011.

Residential Tenancy Branch