

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of the security deposit, and to recover the filing fees associated with this application.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy testified that tenancy started on January 16th, 2010. She stated that on July 1st, 2010, she moved into a larger unit within the same complex, and moved out on May 31st, 2011. The rent at the end of the tenancy was \$925.00 per month. The tenant stated that her security deposit cheque of \$400.00 was returned "NSF", and that on January 7th, 2010, she gave the property managers \$425.00 in cash to cover the bounced cheque and the bank fee. Property manager L.K. stated that the tenant only gave her \$200.00. In her documentary evidence, the tenant provided a copy of a bank transaction completed on January 5th, 2010, showing that she withdrew \$400.00. In his documentary evidence, the landlord provided a ledger showing that the original

\$400.000 cheque had bounced, and receipt of \$200.00 for half the deposit on March 1st, 2010.

The tenant testified that she gave the property managers her forwarding address in writing the third week of May 2011. The landlord and the property managers testified that they did not receive any notice, and that they received knowledge of the tenant's forwarding address when she submitted her package of evidence on or about October 15th, 2011. The tenant did not have a copy of the notice on her documentary evidence.

The tenant stated that the property managers stored her belongings in an unsafe place, and that some of her belongings were stolen. She could not provide any details on what was missing, or how she arrived at a claim of \$100.00 for this aspect of her application.

Analysis

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

The landlord's obligation to deal with the security deposit is not triggered until such time as the landlord receives the forwarding address in writing. The parties' testimony is at complete odds, and as such I am not fully persuaded that the landlord or the property managers received that address as required under the Act. I am satisfied however that as of the date of this hearing the landlord is now aware that the tenant's address on her application is also her forwarding address. The landlord is hereby put on notice that he is deemed to have received the tenant's forwarding in writing on November 15th, 2011, which is 5 business days from the date of this decision.

The landlord must either make an application for dispute resolution or return the security deposit no later than November 30th, 2011.

Concerning the amount of the security deposit, the tenant showed a bank withdrawal of \$400.00. She said that she gave the money to L.K on January 7th, 2010; L.K. states that she only received \$200.00. There is no evidence that the landlord gave the tenant a receipt; the landlord provided a ledger, showing that \$200.00 was entered as half the amount of the security deposit almost 2 months after receiving the cash. Nor was there any evidence that the landlord pursued the tenant, or took any action for the outstanding balance owing. On a balance of probabilities I accept that the tenant gave the landlord \$400.00 and set that amount as the security deposit.

Concerning the stolen property; the tenant's evidence is vague and non-specific as to what items were stolen, by who, and their value. Therefore I dismiss this aspect of the application without leave to reapply.

Conclusion

The tenant's claim concerning the return of the security deposit is dismissed with leave to reapply. 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: November 07, 2011.

Residential Tenancy Branch