

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee.

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

The Landlord's agent, C.S. states that the Landlord, A.S. passed away on December 4, 2011, but that he was on the line to respond to the Tenant's application. The Tenant has stated in her direct testimony and documentary evidence that the Landlord's agent, C.S. did act as the Landlord's Agent for the Tenancy. As such, I am satisfied that the hearing can proceed. The Landlord's agent has acknowledged receipt of the Tenant's application filed on September 23, 2011 and that it was sent by Canada Post Registered mail on September 26, 2011. The Landlord has not filed any evidence.

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 the return of 1 ½ months rent?

Background and Evidence

The Tenant states that the Landlord was served the notice of hearing documents by Canada Post Registered Mail on September 26, 2011 and has provided the Canada Post Registered Mail Receipt. The Landlord has acknowledged receiving the package.

Both parties agree that this Tenancy began on July 15, 2011 on a fixed term tenancy until July 14, 2012 as shown in the submitted copy of the signed tenancy agreement. The monthly rent was \$1,250.00 payable on the 1st of each month and a security deposit of \$625.00 was paid on July 6, 2011. The Tenancy ended on September 1, 2011. No Condition Inspection Report for the move-in or move-out was conducted.

The Tenant states that the rental unit was unlivable and that upon taking possession she did not live in the rental unit at all. The Tenant is seeking recovery of \$1,875.00 consisting of 1 ½ months rent (\$1,250.00 + \$625.00) for the duration that the Tenant

had possession. The Tenant has provided photographs and an invoice from Abell Pest Control for mice activity. The Landlord disputes the Tenant's claims stating that the rental unit was as is as noted in the photographs, but that all of the Tenant's concerns were dealt with when they were reported. The Landlord states that the Tenant had two viewings of the rental unit prior to signing the tenancy agreement and taking possession. The Tenant confirms in her direct testimony that the photographs depict the rental unit as from when she viewed it to the day she vacated the rental unit.

The Tenant states that she provided her forwarding address in writing to the Landlord on August 9, 2011 in a letter to the Landlord stating her intention to vacate the rental unit because of the condition of the rental. The Landlord disputes receiving this letter or any other letters submitted into evidence by the Tenant. The Landlord states that he was only made aware of the notice when he received the Tenant's notice of hearing package. The Landlord states that the security deposit was not paid or an application was not filed in dispute.

Analysis

The Tenant claims that she did not move into the rental unit because of the poor state of the unit. The Landlord states that the unit was as is stated in the photographs submitted by the Tenant. The Tenant stated in her direct testimony that the photographs depict the rental unit's condition on the date she moved in to the date she moved out without change. The Landlord states that the Tenant viewed the rental unit twice before signing the tenancy agreement and taking possession of the rental. The Landlord states that upon verbal notification by the Tenant that he dealt with any issues as he notes in the invoice from Abell Pest Control dated on August 3, 2011. The Landlord comments that the main reason that the Tenant gives for vacating the rental is because of the mice. I find that the Tenant failed to establish her claim for the \$1,875.00 return of the rent. The Tenant failed to allow the Landlord an opportunity to fix the issue. As such, this portion of the Tenant's claim is dismissed.

Section 38 (1) and (6) 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.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find based upon the direct testimony of the Landlord that he neither returned the security deposit nor did he file an application for dispute. Although the Landlord disputes receiving the Tenant's forwarding address in writing on August 9, 2011 as stated by the Tenant, the Landlord did receive it as stated in his direct testimony at the end of September 2011 when the notice of hearing package was received. Both parties agreed that the end of Tenancy was September 1, 2011. As such, I find that the Tenant has established a claim for the return of double the \$625.00 security deposit. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted an order under section 67 for the balance due of \$1,300.00. 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 \$1,300.00.

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: December 28, 2011.

Residential Tenancy Branch