



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC and MNSD

Introduction

This hearing was convened on the tenant's application of September 13, 2011 seeking return of rent and security deposit paid on the claim that the rental unit was not available for occupancy by the applicant as agreed.

The respondent landlord did not appear. The tenant submitted a proof of having sent registered mail to the landlord on September 22, 2011 at the rental unit. The tenant stated that the landlord had given her that address for service, but she stated that he does not live there and the Notice of Hearing was returned to her. There was no written agreement or other document to provide a record of the landlord's address.

Issues to be Decided

This matter requires a decision on whether the tenant is entitled to a Monetary Order for return of her security deposit and rent.

Background and Evidence

It was extremely difficult to get the basic information on this matter as the tenant was incoherent throughout and had considerable difficulty answering questions. For example, the tenant was uncertain of her present address and it took approximately 10 minutes for her to provide one. There was a gentleman with her, but he was unable to assist as he wears a hearing aid and when he turned it up, he said the telephone was drowned out by traffic noise.

As far as I was able to ascertain in 40 minutes, the tenant had some time in August 2011 arranged to move in to the subject rental unit. However when she went to move in, the tenant stated that the suite was not available and the landlord told her he would get back to her when it was.

According to the tenant, the suite was never made available and the landlord did not return the money.

The tenant stated that she went to the rental building some time in September, and met a new resident who stated he had moved in about a week earlier.

The tenant stated that she subsequently was told by other tenants that the rental building had been subject to foreclosure and they had become squatters for a period.

The tenant submitted the second copies of three payments to her from what I believe is the Income Assistance branch. They are all dated August 26, 2011 and are in the amounts of \$425, \$570 and \$165. The "Re" line on the first is not readable, the second states September rent/[name of tenant], and the third states [prorated August rent/[name of tenant]]. There is no reference to the landlord on the copies.

The tenant stated that she had reported the matter to both the ministry and to the police.

Analysis

Given the great difficulty the tenant experienced in giving evidence and in the absence of a written agreement or reliable third party corroboration, I do not have sufficient evidence that a tenancy had been created or that the tenant had given the payments to the landlord, although I believe it to be entirely possible.

Therefore, I dismiss this application with leave to reapply.

If and when the tenant does reapply, I would very strongly recommend that she seek the assistance of a volunteer advocacy group to assist her in preparing the application and presenting evidence at the hearing. If possible, statements from the investigating police officer or from the ministry confirming who cashed the cheques in question would be helpful.

Conclusion

The application 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: December 01, 2011.

Residential Tenancy Branch