



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of rent and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the tenant entitled to the return of rent?

Background and Evidence

The tenancy started on July 01, 2011 for a fixed term of six months. The monthly rent was \$1,700.00. At the start of the tenancy, the tenant paid a security deposit of \$585.00. On August 30, 2011 the parties entered into a mutual agreement to end the tenancy effective September 30, 2011.

The tenant stated that due to problems involving the electrical systems in the unit, she decided to move out immediately. The landlord agreed to return rent to the tenant if a new tenant was found for September.

The tenant stated that she did not hear back from the landlord and happened to go by the unit to return the keys on September 18, when she found that new tenants had already moved in. The landlord agreed that the new tenants moved in on September 07 and paid \$840.00 for September.

Both parties offered different versions of how rent for September was paid by the tenant who is the applicant in this dispute. The tenant stated that on August 30, 2011, she paid \$585.00 to the landlord and allowed the landlord to keep the security deposit to cover the balance of rent for the month of September.

The landlord stated that the tenant paid only \$585.00 for rent for September. The landlord stated that the tenant allowed the landlord to keep the security deposit towards damages.

The tenant filed a copy of a letter written by the landlord on September 20, 2011 which confirms that the landlord had received \$585.00 on August 30, 2011. The letter also adds "*In addition, we withheld the security deposit of \$585 according to the mutual signed agreement to deduct \$585.00 from your security deposit*" The letter continues on to say that the landlord had found a new tenant who had paid \$840.00 for September and this amount would be forwarded to the tenant with deductions for damages. After making deductions for cost of repairs and loss of income due to a lower rental amount, the landlord mailed the tenant a cheque for \$295.00.

In support of his testimony that the tenant had signed off her security deposit towards damages, the landlord filed the inspection report. On page three, the tenant has agreed to allow the landlord to keep \$585.00. This portion of the form is dated August 30, 2011. The move out inspection was done on September 01, 2011 as indicated on the first page of the form and by oral testimony.

The landlord stated that the tenant took items away from the unit and did not return all the keys until September 18. The tenant stated that she had paid rent for the whole month of September and intended to return to finalize matters, but was surprised to find new tenants in the unit on September 18, 2011.

The tenant is claiming the balance of her rent for September in the amount of \$545.00 which represents the amount paid by the new tenant (\$840.00) minus the amount already returned by the landlord (\$295.00).

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that on August 30, she had paid full rent for September by paying the landlord \$585.00 and allowing the landlord to retain the security deposit for the balance of September's rent. This is supported by the letter from the landlord in which the landlord refers to the mutual agreement signed on August 30 and is also supported by the inspection report in which the tenant signed off the security deposit on August 30, prior to the move out inspection on September 01.

After the move out inspection, the tenant paid \$15.05 towards the replacement of items, which should have come from the security deposit, if indeed it was retained for damages.

Based on the evidence filed and the oral testimony by both parties, I find that on a balance of probabilities, it is more likely than not that the tenant paid full rent for September by way of \$585.00 plus the security deposit of \$585.00 for a total of \$1170.00. Since the new tenant paid \$840.00 for September, the landlord is required to return the rent received from the new tenant to the tenant (applicant). Since the landlord has already returned \$295.00, I find that the tenant is entitled to the balance of \$545.00. The tenant is also entitled to the recovery of the filing fee of \$50.00.

Pursuant to section 67, I am issuing a formal order for payment in the amount of \$595.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$595.00**.

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 16, 2011.

Residential Tenancy Branch