



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, O

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit and compensation for damage or loss under the Act or tenancy agreement as well as to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit?
2. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This tenancy started in November 2008. The current Landlord purchased the rental property in December 2009. Rent was \$600.00 per month payable in advance on the 1st day of each month. The Tenant said he paid a security deposit of \$250.00 at the beginning of the tenancy however the Landlord claimed the Tenant did not pay a security deposit.

The Tenant claimed that on August 5, 2011, the Landlord asked him if he would move out of the rental unit at the end of the month as family members would be residing there and he agreed. The Landlord claimed that he gave the Tenant verbal notice in May 2011 and the Tenant agreed that he would move out at the end of August 2011. The Parties agree that the Tenant did not pay rent for August 2011 and the Tenant withdrew his claim for a rent rebate for 5 days of August 2011.

The Tenant claimed that he returned to the rental unit on August 28, 2011 and discovered that the Landlord had begun renovating the rental unit and in particular had removed the carpeting and baseboards. The Tenant said the rental unit was not habitable given the dirt and disarray so he got the assistance of a friend to help him move. The Tenant provided a witness statement of A.D., who claimed that on August 27, 2011 she helped the Tenant move his belongings which were stored in a corner of the rental unit. The Tenant said that as a result of having to move early, he incurred additional storage and moving expenses.

The Landlord claimed that he spoke to the Tenant on August 5, 2011 and told him that he wanted to start the renovations on August 27, 2011 to prepare the unit for his relatives and the Tenant agreed he would move out on that day. The Landlord said he helped the Tenant move some of his belongings from the bedroom on August 24, 2011 so that he could remove the carpeting from that room early. The Landlord said the Tenant did not arrive at the rental unit on August 28, 2011 and as a result, some of his packed boxes were moved to one side of the living room. The Landlord also argued that the Tenant provided no receipts in support of his alleged expenses and further argued that the expenses were unreasonable given that the Tenant did not have a lot of belongings and he helped the Tenant move many of his heavy belongings.

Analysis

In this matter, the Tenant has the burden of proof and must show (on a balance of probabilities) that he paid a security deposit and that the Landlord has failed or refused to return it without a reason permitted under the Act. The Tenant also has the burden of proof and must show that the Landlord ended the tenancy earlier than agreed to and that he suffered damages as a result. This means that if the Tenant's evidence is contradicted by the Landlord, the Tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Tenant claimed that he paid a security deposit of \$250.00 at the beginning of the tenancy to the previous owners of the rental property but did not receive a receipt for it. The Tenant provided no other corroborating evidence that he paid a security deposit. The Landlord claimed that when he purchased the rental property, there was no adjustment made to the purchase price for the Tenant's security deposit and the Tenant did not pay a security deposit to him. The Landlord provided a copy of the statement of adjustments that shows no adjustments for rent or a security deposit. Given the contradictory evidence of the Parties on this issue and in the absence of any evidence from the Tenant to resolve the contradiction, I find that there is insufficient evidence to conclude that a security deposit was paid and that part of the Tenant's application is dismissed without leave to reapply.

The Tenant also claimed that there was a verbal agreement that the tenancy would end on August 31, 2011 but that the Landlord started renovations early making the rental unit unfit for occupation. The Tenant provided a witness statement of a person who helped him move, however, the deponent of that statement did not give evidence at the hearing and therefore I find that her statement is unreliable. In particular, there was no way to question this person as to why her assistance with the Tenant's move was "unexpected." The Landlord denied that he started renovations early and claimed that he had a verbal agreement with the Tenant that he would vacate the rental unit on August 27, 2011 to facilitate the renovations (which started on August 24, 2011) but that the Tenant did not vacate until August 28, 2011. Given the contradictory evidence of the Parties on this issue and in the absence of any evidence from the Tenant to resolve

the contradiction, I find that there is insufficient evidence to conclude that the Landlord ended the tenancy 3 days early and as a result, the Tenant's application for moving and storage expenses is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without 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 12, 2011.

Residential Tenancy Branch