



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking a monetary order for double the portion of the security deposit which was not returned to the Tenants and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

During the course of the hearing the appearing Tenant was rude and used inappropriate language towards the Officer. The Tenant directed an explicative towards the Officer and then left the hearing prior to its conclusion.

Issue(s) to be Decided

Are the Tenants entitled to the monetary relief sought?

Background and Evidence

The Tenant testified she lived in the rental unit with her mother.

The Tenant testified she participated in the incoming and outgoing condition inspection reports.

The Agent for the Landlord testified that the appearing Tenant was not present for the condition inspection reports. The Tenant then agreed with the Agent that she was not present for these reports.

The Tenant testified the Landlord changed the tenancy agreement when her sister left the rental unit and she moved in. The Tenant says the Landlord changed the tenancy agreement to show she was added to the tenancy. The Tenant alleged the Landlord “tampered” with the tenancy agreement in doing this and she did not feel it was a legitimate tenancy agreement. She testified she did not want to be stuck in a term tenancy agreement. I note the tenancy agreement is indicated as a month to month tenancy.

When asked, the Tenant was unable to testify as to when the tenancy began or to provide a date that the security deposit was paid to the Landlord. She testified she did not have the documents for her claim in front of her. When the Tenant was asked the date the security deposit was paid to the Landlord she replied, “When the tenancy started.” When asked for clarification, she replied, “It was the day before my mom’s birthday.” When asked for further clarification on when the deposit was paid, the Tenant explained her mom’s birthday is in August. I note the tenancy agreement indicates the tenancy started on December 1, 2010.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I dismiss the Application of the Tenants.

A dispute resolution hearing is a formal, legal process. Parties must be prepared for the hearing and be prepared to provide their testimony and evidence in an appropriate manner.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

To prove a loss and have the other party pay for the loss requires the claiming party to prove four different elements:

1. Prove that the damage or loss exists;
2. Prove that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;

3. Establish the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this instance, it was clear the Tenant was not accurate in her testimony and was unable or unprepared to establish the claims against the Landlord.

Therefore, based on all of the above, I find that the Tenant had insufficient evidence to prove the claim and the Application is dismissed.

Conclusion

The Tenants' Application is dismissed.

This decision is final and binding on the parties, except as otherwise provided for under the Act, and 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: January 09, 2012.

Residential Tenancy Branch