



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking to retain the tenant's security and pet deposits and recover the filing fee paid for this application.

Both parties attended the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving she should be entitled to retain the deposits?

Background and Evidence

This tenancy ended by way of a mutual agreement reached at a hearing held September 20, 2011. In that hearing the parties agreed:

- 1) The Tenant agreed to move out of the rental unit on September 30, 2011.
- 2) The Tenant agreed that the Landlord could retain \$500.00 from her security deposit for unpaid rent for September, 2011.
- 3) The Tenant said she would give the Landlord her forwarding address in writing prior to moving out.
- 4) The Landlord agreed to return the balance of the Tenant's security deposit \$212.50 and pet deposit \$712.50 within 15 days of the end of the tenancy and receiving the Tenant's forwarding address in writing.
- 5) The Landlord agreed stop discussing the Tenant's situation and the tenancy.
- 6) The Landlord and the Tenant both agreed an Order of Possession with an effective date of September 30, 2011 would be issued to the Landlord.

The landlord now seeks to retain the balance of the security deposit and the entire pet deposit (total \$925.00). The landlord submits that the tenant did not move out in

accordance with the Order of Possession at 1 o'clock on September 30, 2011 but remained until October 1, 2011. The landlord also says that the tenant caused some \$8,000.00 in damages. The landlord testified that she is seeking to retain the \$925.00 in remaining deposits because they were not able to re-rent the premises for October 1, 2011 because of the cleaning and damages.

The tenant disagrees that there were damages. The tenant says she vacated on September 30, 2011 in accordance with the Order of Possession. Further the tenant says she condition inspection reports at move-in or move-out were not prepared. The tenant says she left her forwarding address with the landlord on October 1, 2011 including the house and mail keys and none of her deposits have been returned as agreed on September 20, 2011 nor has her deposit for the keys been returned. The tenant submits that she should be entitled to double the deposit under the Act.

The landlord asked for an adjournment to be able to gather and submit evidence to support her claims. The landlord says that the previous manager was fired and that manager has all the evidence.

Analysis

The landlord filed this application on October 17, 2011. An applicant to a legal action must serve/deliver the evidence they wish to present to support their claims on the parties and the Residential Tenancy Branch prior to the hearing. Adjournments are granted in exceptional circumstances, not in circumstances where one party forgets or neglects to properly prepare for a hearing. The landlord did not have all of her evidence because, as she says, a previous manager was fired and he/she took the evidence with him/her. That the landlord did not take care to ensure all files in the possession of a manager who was about to be terminated were returned to the landlord prior to that manager's departure is carelessness and not a reason for which I am prepared to grant an adjournment. The landlord has had ample time since the filing of this application to retrieve that evidence from the fired manager. I therefore declined to grant the landlord's request for an adjournment.

The landlord bears the burden of proving her claims. The landlord says the tenant over held in the rental unit and that she caused damage. The tenant says this is not true. Other than her own testimony, the landlord has not provided any other evidence to support her claims. I find that the landlord has failed to submit sufficient evidence to support her claims and I therefore dismiss the landlord's claims. Having dismissed the landlord's claim I order the landlord to return to the tenant the \$925.00 the landlord currently holds in remaining security and pet deposits.

As I do not have an application before me from the tenant for recovery of the \$25.00 key deposit which she says has not been returned to her, I direct the landlord to conduct him or herself accordingly and return any other deposits she may hold to avoid any further claims being made by the tenant.

Conclusion

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 05, 2012.

Residential Tenancy Branch