



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. Return of all or part of the security deposit.

The landlord's application is seeking orders as follows:

1. Monetary order for damage to the rent unit;
2. Monetary order for unpaid rent; and
3. To keep all or part of the security deposit.

Although served with the tenant's Application for Dispute Resolution and Notice of Hearing on January 30, 2012, by personal service the landlord did not appear.

The tenant appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

Preliminary Issue – Landlord's Application

This matter was set for hearing by telephone conference call at 9:30A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the tenant. Therefore, as the landlord did not attend the hearing by 9:40 A.M, and the tenant appeared and was ready to proceed, I dismiss the landlords claim without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The tenancy began in October, 2010. Rent in the amount of \$1,895.00 was payable on the first of each month. A security deposit of \$947.50.00 was paid by the tenant. On July 29, 2011, the tenant and co-tenant entered into a new twelve month fixed term tenancy with landlord. File in evidence is a copy of the tenancy agreement signed by the parties.

The tenant testified that she moved out of the rental unit on September 11, 2011, as her relationship with the co-tenant was abusive. The tenant stated that she sent a letter to the landlord that she had cancelled the rent cheque for October 2011 and requested the return of her post dated cheques.

The tenant testified that the co-tenant stayed in the rental unit until sometime in October 2011.

The tenant testified that she returned to the rental unit when the co-tenant left and removed everything that was left behind and cleaned the rental unit.

The tenant testified she would not have cleaned the rental unit if she knew the landlord was going to keep the security deposit. The tenant states it appears the co-tenant gave the landlord permission to keep the security deposit for unpaid rent.

The tenant testified that she paid the security deposit and the security deposit should be returned to her.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Where co-tenants have entered into a fixed term tenancy agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the tenancy agreement until the end of the term. If the landlord and tenant sign a written agreement to end the tenancy agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first tenancy agreement is no longer in effect.

In this case, the landlord and tenant did not sign a written agreement to end the tenancy agreement. Therefore, the landlord was not obligated to return the security deposit as the co-tenant was still residing in the rental unit and a security deposit is paid in respect of a particular tenancy agreement regardless of who paid the deposit.

A tenant who is a party to the tenancy agreement to which the deposit applies may agree to allow the landlord to keep all or part of the deposit for unpaid rent.

In this case, the evidence of the tenant was the co-tenant gave the landlord permission to keep the security deposit for unpaid rent.

Therefore, I find the tenant's application for the return of the security deposit is dismissed.

Conclusion

The tenant's application is dismissed.

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: March 29, 2012.

Residential Tenancy Branch