



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of a deposit and compensation for damage or loss.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

No written evidence submissions were made.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Is the tenant entitled to compensation in the sum of \$2,000.00 for damage or loss under the Act?

Background and Evidence

There were several facts that the parties agreed upon:

- In June 2009 the tenant took possession of a garage on the landlord's property;
- That friends of the tenant lived on the main floor of a home on the property;
- That the tenant used the facilities in the house; and
- That in March 2010, the tenant commenced a tenancy for use of a bedroom in the house.

The landlord agreed that when the tenant first rented the garage he accepted a cheque issued in the sum of \$200.00. The cheque was issued by the government for use as a security deposit. However, because the tenant was in need of money, the landlord

agreed to cash the cheque and return the funds to the tenant, for her own use. The landlord stated that the tenant was using the services available in the house and that she was sleeping on the couch in the house.

The tenant testified that she had been homeless and had rented the garage for the purpose of a dwelling and that she did not have resources for anything more. The tenant did not receive return of her deposit and paid the landlord a 2nd deposit in the sum of \$200.00 when she began the 2nd tenancy in March 2010. The tenant stored her belongings in the garage and slept in a loft area of the garage. The tenant stated she was waiting for a room to become available for rental in the house; this occurred in March 2010.

The tenancy that commenced in March 2010 was fraught with difficulties; the tenant provided no less than 6 file numbers in relation to hearings that had been held between the parties. Some of these decisions were briefly referenced during the hearing, in order to confirm the start date and nature of that tenancy.

The tenant's witness provided affirmed testimony that while the tenant had rented the garage she did not use any facilities in the house that was on the property; in contradiction to the tenant and landlord's submission.

The tenant has claimed compensation for the loss resulting from the tenancy in the garage, as the building did not have any running water or other services.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The tenant has submitted she rented a garage as a rental unit. The Act defines rental unit:

"rental unit" means living accommodation rented or intended to be rented to a tenant

I have considered the meaning of "living accommodation" and find that the intent of the definition is in consideration of accommodation that, at the least provides facilities so that the person may meet their basic needs. In the absence of any running water or plumbing; without the advantage of some sort of independent bathroom facility that one might find in a rural location, I find that the tenant rented the garage in an arrangement that does not meet the meaning of rental unit, as defined by the Act.

The tenant rented a space suitable for storage and now argues that the garage was meant to be used for residential accommodation; a use I find that is clearly not meant for a garage.

I placed no weight on the tenant's witness' statement; he contradicted the tenant and landlord's testimony in relation to the use of facilities in the house.

Therefore, I find that the tenant's application does not meet the definition of residential accommodation and that jurisdiction under the Act is declined.

Conclusion

Jurisdiction is declined.

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: May 03, 2012.

Residential Tenancy Branch