



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order that the Landlord comply with the Act – Section 62.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy began on December 1, 2011 and ended on April 27, 2012. Rent of \$800.00 was payable monthly. At the onset of the tenancy, the Landlord collected a \$400.00 security deposit. The Tenant states that she agreed that the Landlord could keep the security deposit for unpaid rental arrears. The Tenant is unsure of the exact amount that owed and the Landlord states that these arrears totaled \$545.00 and accrued as follows:

- \$45.00 for January 2012;
- \$100.00 for February 2012; and
- \$400.00 for April 2012.

The Landlord states that the Tenant was also given a loan of \$140.00.

The Tenant states that the Landlord was sent a rent cheque of \$400.00 for May 2012 rent in error and that the Landlord has refused to return it to the Tenant. The Landlord states that this cheque was kept to reimburse the Landlord for cleaning to the unit and for the rental arrears and the loan. The Landlord did not file an application to make a claim against the Tenant. The Landlord states that the Tenant smoked in the unit requiring such cleaning and the Tenant states that she did not smoke in the unit and that the unit was clean. The Landlord states that the cleaning was completed for a cost of \$275.00. The Landlord provided an unsigned invoice with a notation that the amount was paid by cheque. No copy of this cheque was provided. The Landlord provided faxed copies of photos apparently showing the unit but it is noted that these copies do not provide any clarity as they are primarily darkened. The Tenant asks that the Landlord comply with the Act and return the \$400.00.

Analysis

Section 44 of the Act sets out when a tenancy will end and a tenant is not liable to pay rent after the tenancy has ended pursuant to these provisions. There is no dispute in relation to the end of the tenancy or the provision of notice. As such, I find that the Tenant is not liable for any rent for May 2012 and that the Tenant is entitled to return of the \$400.00. The Tenant did acknowledge however owing some amount for rental arrears and did not dispute the amounts provided by the Landlord. Accepting the undisputed evidence that the Tenant agreed that the Landlord could retain the \$400.00 security deposit for rental arrears, I find that the rental arrears remaining after the deduction of the security deposit is \$145.00. I deduct this amount from the entitlement and find that the Landlord owes the Tenant **\$255.00**.

Given the Tenant's dispute that the unit was clean and considering that the Landlord's evidence fails to show the state of the unit or payment for the cost of cleaning, I find that the Landlord has not shown, on a balance of probabilities, an entitlement to any costs for cleaning the unit.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$255.00**. If necessary, this order may be filed in the Small Claims 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: May 25, 2012.

Residential Tenancy Branch