



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OPT AAT

Preliminary Issues

Upon review of the Tenant's application for dispute resolution the Tenant advised that she wished to withdraw her requests for an Order of Possession, an Order to allow her access to the rental unit, and for the return of her October 2012 rent. She stated that she wished to proceed with her request for the return of her security deposit.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of her security deposit.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant submitted evidence which included, among other things, copies of: receipts for payment of rent, her written statement, intent to rent form, and letters to the Landlord.

The Landlord confirmed receipt of the Tenant's evidence. He advised that although he submitted evidence to the *Residential Tenancy Branch* he did not serve the Tenant with copies of his evidence.

The Tenant stated that she moved into the 1 bedroom rental unit at the same time as her male roommate T.B. on May 28, 2012, each of them paying \$212.50 towards the security deposit. She stated that she paid cash and her roommate paid his security deposit with a cheque issued from income assistance. Her rent was paid directly to the Landlord from Income Assistance. She moved out of the rental property at 12:35 a.m. on October 1, 2012 and later that day provided the Landlord with written notification of her move. Her forwarding address was provided to the Landlord on her application for dispute resolution.

The Landlord initially stated that only the male was a tenant, as listed on the tenancy agreement. Upon further discussion, the Landlord confirmed that he rented the rental unit to two tenants, T.B. and A. S. Only T.B. was listed on the tenancy agreement because he was only allowed to rent the unit to one person. He argued that the full security deposit of \$425.00 was paid to him by T.B. and he has no recollection of A.S. paying cash for part of the deposit. The Landlord advised that T.B. moved out of the rental unit on October 31, 2012 and that he returned the full deposit of \$425.00 to T.B. He stated that T.B. wrote him a letter advising that the deposit was paid in full by T.B.

Analysis

The Landlord confirmed he did not provide the Tenant with copies of his evidence which is in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the applicant Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenant has the burden to prove she paid a security deposit to the Landlord. The only evidence before me was verbal testimony which was disputed by the Landlord. I find the disputed verbal testimony insufficient to meet the Tenant's burden of proof and the claim is dismissed.

The evidence supports the Landlord returned the full deposit to the male tenant T.B. when he vacated the property at the end of October 2012. Accordingly, the responsibility now falls to the tenants to apportion the deposit monies among them.

Conclusion

I HEREBY DISMISS the Tenant's claim, without leave to reapply.

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: November 19, 2012.

Residential Tenancy Branch