



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This was a hearing concerning the tenant's application for the return of a security deposit. The hearing was conducted by conference call. The applicant and the respondent called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award in the amount of her security deposit?

Background and Evidence

The tenant testified that she learned through a colleague at work that the respondent had a suite for rent in his house. She attended at the house in July to view the suite. She said that she fell in love with the suite, agreed to rent it and paid the landlord a \$400.00 security deposit in cash. She testified that the monthly rent was to be \$825.00 and that the tenancy was supposed to start on August 15th. The respondent did not prepare a written tenancy agreement and apparently did not give the tenant a receipt for the security deposit payment.

The tenant said that before the tenancy was to start the respondent came to her work place and spoke to her. She said that on several occasions the respondent made sexually inappropriate remarks to her concerning the wearing of lingerie at the rental unit. On one occasion the remarks were made when her three year old son was present. On the last occasion the tenant said that the respondent asked when she was going to start sleeping at the rental unit and told her that he had beds at the rental property that she could use. He then told her that if she used one of the beds he could say that he had got the tenant to sleep in his bed. The tenant testified that she was disturbed by the landlord's remarks and told him that she was not going to move in and would not rent his unit. She asked for her security deposit back, but the landlord refused to return it.

The tenant said that after the landlord refused to return her deposit she contacted the Residential Tenancy Branch to obtain advice about how to proceed. She was advised to send the landlord a letter providing a forwarding address and requesting that the landlord return her deposit within 15 days. The tenant testified that she mailed such a letter to the landlord at his residence in September. She did not submit a copy of the letter as evidence, but she read the contents of the letter to me during the hearing. The landlord testified that he did not receive the letter; he suggested that someone in his household may have lost or misplaced it. .

The landlord said that he was unaware that he had an obligation to create a written tenancy agreement when he agreed to rent to the tenant and took her security deposit. He denied that he made any inappropriate remarks to the tenant. He said that he lost rental income because the tenant backed out of her commitment to rent his suite. The landlord said that he was not aware that he needed to make an application if he intended to retain the security deposit or make a claim against it. The landlord said that the rental unit is still vacant. He did not submit any documents or written evidence in response to the tenant's application.

Analysis and conclusion

I accept the tenant's testimony at the hearing that the landlord made inappropriate comments to her before the tenancy was to commence and that these comments made her feel so uncomfortable that she decided that she could not live in the rental unit. I accept and prefer the tenant's evidence on this point to that of the landlord. I have reached this conclusion because, on the evidence the tenant found the rental unit to be perfect for her needs and I find that it is unlikely that she would have backed out of the tenancy arrangement if the comments she complained of had not been made. Bearing in mind the fact that the tenant is a single woman with a young child I find that the tenant had sufficient grounds to decide to not move into the rental unit and to request the return of her deposit. I find that the landlord's inappropriate comments constituted a sufficiently serious breach of the landlord and tenant contract that it justified the tenant in summarily declaring that she would not be bound by the agreement without incurring any liability to the landlord for future rent payments and without the necessity to provide a one month Notice ending the tenancy.

At the hearing and in her application the tenant requested only the return of the original deposit amount. The tenant did not pay a filing fee for her application. I grant her a

monetary order in the amount of \$400.00 as claimed. This order may be registered 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: January 11, 2013

Residential Tenancy Branch

