



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD, FF, O
 Landlord MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a monetary order for monetary compensation for damage or loss under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of the security deposit, to recover the filing fee for this proceeding and for other considerations.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on January 25, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on January 18, 2013, in accordance with section 89 of the Act.

The Landlords and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there loss or damage to the Landlord and if so how much?
2. Is the Landlord entitled to compensation for loss or damage and if so how much?
3. Is the Landlord entitled to retain the Tenant's deposits?

Tenant:

1. Is the Tenant entitled to recover the security deposit?
2. What other considerations are there?

Background and Evidence

This tenancy started on November 1, 2012 as a month to month tenancy. Rent was \$1,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$500.00 on October 9, 2012. The Tenant said there was no written tenancy agreement and no move in or move out condition inspection reports completed.

The Tenant said they moved out of the rental unit on In December and the actual tenancy ended on December 31, 2012. The Tenant said she gave the Landlord her notice that she was moving out of the rental unit on December 1, 2012 by putting a letter in the Landlord's mail box. The Landlord said he did not receive the notice that the Tenant was moving out and he did not know she was moving out until the Tenant moved out of the rental unit. The Tenant said she had no evidence that confirmed the time that she gave the Landlord the notice that she was moving out of the unit. The Landlord said he did receive the notice and the Tenant's forwarding address on January 16, 2013. The Tenant said she moved out of the unit because of excessive noise made by the Landlord's son and the Landlord's band practicing in the basement rental unit.

The Tenant continued to say as a result of having to move she has filed the following claim against the Landlords:

1. To redirect her mail delivery \$50.00
2. To recover her security deposit \$500.00
3. To recover the cost of curtains and hardware \$135.93
4. Moving truck expenses \$156.53
5. Move in cleaning expense \$200.00
6. Lost wages of the Tenant's fiancé in the amount of \$2,450.00
7. \$500.00 for time and stress the Landlord caused the Tenant.

The Tenant said the total claim is \$3,992.46.

The Tenant sent into evidence a narrative of the events as she saw them, a utility receipt and a copy of the letter to the Landlord ending the tenancy (it should be noted the letter is not dated).

The Landlord said he was unaware the Tenant was moving out until the Tenant started moving her things out of the rental unit. As a result the Landlord has made an application for lost rental income for January, 2013 and to retain the Tenants security deposit as partial payment for the loss rental income. On questioning the Landlord said at the start of January 2013, he moved into the unit the Tenant had rented. The Landlord continued to say that the rental income he lost was actually for the basement unit that he had been living in. The Landlord said his claim is for \$1,000.00 of lost rental income for January, 2013. The Landlord continued to say he has retained the Tenant's security deposit for the conclusion of this Hearing.

Analysis

First in regard to the Landlord's claim it is apparent the Landlord is claiming loss income for the basement unit as a result of him moving out of the basement unit into the unit the Tenant vacated at the end of December, 2012. As a result the rental unit the Tenant was in was occupied by the Landlord in January, 2013. Consequently there is no loss of rental income for the unit the Tenant rented as the Landlord was occupying it. This application is about the Tenant's rental unit not the basement unit therefore loss rental income for the basement unit is not at issue in this hearing. Consequently I dismiss the Landlord's claim and application without leave to reapply.

With regard to the Tenant's application to determine a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened **solely** because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage (receipts or invoices)
4. Proof that the claimant has taken steps to minimize the loss.

Although the Tenant has explained her claims in a narrative written by her there is no supporting evidence to corroborate the Tenant's claims except the Tenant's claim that the Landlord has not returned her security deposit. In a situation that it is just the applicant's word against the respondent's word the burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Consequently I dismiss all the Tenant's claims except the Tenant's claim for the return of her security deposit as this claim was verified by the Landlord. I award the Tenant a monetary order for \$500.00 to recover the security deposit from the Landlord.

As the Tenant has only been partial successful in this matter and the Landlord was not successful I order both the Tenant and Landlords to bear the cost of the filing fee of \$50.00 each which they have already paid.

Conclusion

The Landlords' application for loss of rental income and to retain the Tenant's security deposit are dismissed without leave to reapply.

A monetary order has been issued to the Tenant for \$500.00.

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: April 09, 2013

Residential Tenancy Branch

