



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking a monetary order under the Act or tenancy agreement, and to recover the filing fee for the Application.

Only the Tenant appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified she served the Landlords with the Notice of Hearing and Application by registered mail, sent on January 19, 2013. Under the Act, the Landlords were deemed served five days after mailing. However, the Landlords did not appear at the hearing. I find the Landlords were duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

There was a typographical error in the rental unit address on the Tenant's Application, which I have amended. The correct address for the subject rental unit is shown on the cover page to this Decision.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlords?

Background and Evidence

The Tenant testified that the tenancy began on September 19, 2011. The Tenant testified she did not receive a copy of the tenancy agreement from the Landlords. The monthly rent was \$1,200.00 per month.

The Tenant testified she paid the Landlords a security deposit of \$1,200.00 for the rental unit by using a post-dated cheque, which the Landlords had requested be dated for September of 2012. The Tenant gave the Landlords a cheque post-dated for September of 2012; however, the tenancy ended on July 31, 2012, and the Tenant testified she put a stop payment on the security deposit cheque before September 19, 2012.

The Tenant testified she gave the Landlords a Notice to End Tenancy which was effective on July 31, 2012, and the Tenant vacated the rental unit on July 31, 2012.

On or about August 21, 2012, the Tenant noticed that the Landlords had cashed a post-dated rent cheque for August 19 of 2012. The Tenant wrote an email requesting the return of the rent payment for August of 2012. The Landlords refused to return this amount to the Tenant.

In a subsequent email, the Landlords alleged that the Tenant had not paid the rent for July of 2012, as she had put a stop payment on the July 2012 rent cheque. The Tenant testified that she had paid all the July rent and the Landlords were aware of this through the bank information the Tenant provided them.

The Landlords had also alleged that the Tenant had damaged the rental unit and did not leave it clean at the end of the tenancy. The Tenant stated she did no damage and left the rental unit cleaner at the end of the tenancy than what it had been at the start of the tenancy.

The Tenant testified that no incoming or outgoing condition inspection reports in accordance with the Act had been done. The Tenant testified she walked through the rental unit with a neighbour and gave the keys to the neighbour at the end of the tenancy. According to the testimony of the Tenant, the neighbour commented that the rental unit was clean at the end of the tenancy.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlords have breached the Act.

Under the definitions section of the Act, "rent" is defined as

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees];*

[Reproduced as written.]

In this instance the Tenant did not have possession of the rental unit in August of 2012, since possession had been returned to the Landlords on July 31, 2012. Therefore, the Landlords are not entitled to any rent for the month of August 2012, and I find the Landlords have breached the Act by taking rent for a period of time when it was not due to them.

If the Landlords had felt the Tenant had breached the Act or tenancy agreement their remedy was to file their own Application to claim against the Tenant for the alleged cleaning or damages to the rental unit. The Landlords had no right or authority under the Act to simply cash the August rent cheque because they felt they were owed money by the Tenant for cleaning or damage.

For these reasons I grant and issue the Tenant a monetary order in the amount of **\$1,250.00**, comprised of the \$1,200.00 rent cheque improperly cashed by the Landlords, and the \$50.00 filing fee for the Application.

The Landlords must be served with a copy of the order and the order is enforceable in the Provincial Court (Small Claims division).

Conclusion

The Landlords improperly cashed a rent cheque given to them by the Tenant, as they had no right or authority to take rent for a month when the Tenant was not in occupation of the rental unit. The Landlords may not use a rent cheque to pay for the alleged cleaning for the rental unit.

The Tenant is granted a monetary order for \$1,250.00 against the Landlords, enforceable in the Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 08, 2013

Residential Tenancy Branch