



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to recover the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for the recovery of the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testifies that this tenancy started on June 24, 2012 for a monthly rent of \$695.00 plus \$100.00 for utilities that was due by the first of each month. The tenant also testifies that he paid a security deposit on June 24, 2012 of \$400.00. The tenant testifies that the landlord did not conduct a move in condition inspection at the start of the tenancy. The tenant testifies that he gave the landlord notice to end the tenancy and moved from the rental unit on March 31, 2013. The tenant gave the landlord a forwarding address in writing on April 09, 2013.

The landlord testifies that the tenancy started on June 12, 2012 rent was \$800.00 per month however reductions were applied of \$100.00 if the tenant paid rent and utilities by the 21st day of each month making the rent \$700.00 per month.

The tenant testifies that on June 12, 2013 he viewed the unit with the landlord while the previous tenant still had occupation of the unit. The tenant testifies that he paid the landlord \$200.00 to hold the unit. The tenant later testifies that this \$200.00 paid was towards the last month's rent and utility deposit. The tenant testifies that on June 24, 2012 he paid the landlord the sum of \$1,195.00 however the landlord has documented this as \$1,194.00 on the receipt. The tenant testifies that this amount was for rent of \$685.00, for a security deposit of \$400.00 and \$100.00 for the utilities for that month.

The tenant testifies that the landlord has not returned this security deposit and the tenant seeks to recover the amount of \$400.00. The tenant testifies that on the application he had applied for \$695.00 in error.

The landlord testifies that the tenant signed a tenancy agreement which was hand written by the landlord. The landlord has provided a copy of this two page document in evidence. The landlord testifies that this agreement clearly states that no security deposit was paid by the tenant. The landlord agrees the tenant paid \$200.00 however testifies that this was to cover any overuse of utilities as specified under the tenancy

agreement. The landlord testifies that as he has had troubles with the security deposit with previous tenancies so he no longer requires tenants to pay a security deposit.

The landlord disputes the tenants testimony and evidence and testifies that the tenant first viewed the unit on May 28, 2012 and agreed to rent the unit from June 01, 2012 however the tenant gave the landlord a story about jiggling his money and asked the landlord to wait until his next pay cheque. The landlord testifies that because of this the tenant did not move into the unit until June 12, 2012. The landlord testifies that the tenant signed the tenancy agreement and agreed to pay rent of \$800.00 which had been discounted by \$100.00 per month to \$700.00. The tenant took it upon himself to further deduct another \$5.00 for the cost of certified cheques for the rent. The landlord testifies that the first amount of rent paid of \$1,194.00 was for the remainder of rent for June and rent for July, 2012 and left an unpaid balance of \$6.00.

The landlord testifies that the tenant has contradicted his written submission. The landlord refers to two letters written by the tenant and provided in evidence. The landlord testifies that in these letters the tenant has stated that \$200.00 was paid as a holding deposit and then states that it was for the first month's rent and utility deposit. The landlord questions the tenant's credibility in this matter.

The tenant disputes the landlords claim that he signed the tenancy agreement provided in evidence. The tenant testifies that he neither signed nor initialled this agreement and the signature is not the tenants and is not the same as the tenant's signature on his other documentation. The tenant also testifies that the initials on this agreement are not the tenants. The tenant testifies that the contents of this agreement are so inconsistent with what a landlord can do that the tenant would never have signed an agreement of this sort.

The landlord argues that if the tenant had not signed this agreement at the start of the tenancy then the tenant would not have been able to rent this unit.

The tenant states during the hearing that there is no further monetary claim for money owed or compensation for damage or loss and the tenant therefore withdraws this section of his application.

Both parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

I have carefully considered all the pertinent evidence before me, including the pertinent sworn testimony of both parties. I have considered the tenancy agreement provided in evidence to determine if this is an agreement that has been signed by the tenant. I am not wholly satisfied that the signature on this agreement is the tenants signature taking into account the other signatures provided by the tenant in documentary evidence. This document has also been witnessed by the landlord and not an independent third party so little weight can be placed on this “witnessed” document. With that in mind the burden of proof falls to the tenant to show the amount of security deposit paid by the tenant at the start of the tenancy.

The tenant has testified that he paid \$400.00 at the start of the tenancy for a security deposit and this amount was included in the receipt for \$1,194.00. However the receipt does not document this as a security deposit payment. In light of this I have considered the tenants other documentary evidence namely the two letters provided in evidence that the tenant sent to the landlord. In these letters the tenant discusses the sum of \$200.00 which was paid and the tenant does contradict his statements in both letters.

I am not willing to issue a Monetary Order to the tenant when the tenant has not met the burden of proof concerning how much of a security deposit or in fact if any security deposit was paid. 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.

The tenants claim is therefore denied.

Conclusion

The tenant's application is dismissed in its entirety 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: August 01, 2013

Residential Tenancy Branch

