



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, OLC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested a monetary Order for return of the security deposit and an Order the landlord comply with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing. Outside of a 1 page submission made by the landlord, that appeared to relate to another matter, neither party supplied any written submissions.

The parties were able to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony provided.

Issue(s) to be Decided

Are the tenants entitled to return of the security deposit paid?

Must the landlord be Ordered to comply with the Act?

Background and Evidence

The tenancy commenced in February 2013, rent was \$1,100.00 per month, due when payment from a government agency was provided each month. A tenancy agreement was not signed.

The tenants vacated the home at the end of July 2013.

There was no dispute that the landlord received the tenant's forwarding address when he was served with the Notice of hearing package.

The tenants submitted that a \$500.00 security deposit was paid by several methods. First the landlord purchased a set of \$500.00 winter tires and rims for his truck for \$200.00; providing the landlord with the equivalent of a \$300.00 payment toward the security deposit owed. Then the tenant's paid the landlord \$200.00 cash, for a total payment of \$500.00.

The landlord agreed that the tenants had provided some labour at \$20.00 per hour, toward rent reductions. The landlord did not deny he had purchased tires and rims from the tenants but denied payment of the security deposit.

The parties agreed that nothing was placed in writing; all arrangements made during this tenancy were verbal.

The female tenant became very upset upon hearing the landlord deny he had received payment equivalent to \$500.00 as a security deposit.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The landlord denied having received payment via the sale of tires and rims for his truck and payment of cash. The landlord did agree that labour was provided as a method of reducing rent.

In the absence of any evidence, such as a written bill of sale for the tires and rims or any document setting out that the security deposit had been paid through some form of consideration, I find that the tenants have failed to prove payment of the security deposit to the landlord. The tenants have the burden of proving that the deposit was in fact paid through some manner.

Therefore, in the absence of any evidence such as a document setting out the terms of payment, evidence of the cash payment made to the landlord or independent submissions that supported the tenant's claim I find that the tenants have not met the burden of proving that a security deposit was paid. Therefore, I find that the tenant's application is dismissed.

I note that the landlord breached the Act when he failed to sign a tenancy agreement with the tenants. The parties are reminded that any arrangements for payment or cash payment made should be accompanied by a written record and receipt.

Conclusion

The application is dismissed.

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 14, 2013

Residential Tenancy Branch

