



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the landlord and tenant. The landlord applied to keep all or part of the security or pet damage deposit and for a Monetary Order relating to unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The tenant applied for: the return of all or part of the security or pet damage deposit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the Act), regulation or tenancy agreement; and for 'Other' issues identified as false charges for utilities being claimed by the landlord and the return of the tenant's two post dated cheques.

The tenant appeared for the hearing and testified that she had served a copy of the application to the landlord by registered mail. The tenant provided a copy of the Canada Post tracking number and the Canada Post website indicates that the landlord received and signed for these documents. Based on this, I find that the tenant served the hearing documents to the landlord as required by the Act.

The landlord failed to appear for the hearing which concluded at 9:23 a.m., despite being served with the hearing documents by the tenant and making a landlord's application to be heard on the same date and time as the tenant's application. As a result, I dismiss the landlord's application without leave to re-apply.

At the start of the hearing the tenant confirmed that she had cancelled the post dated cheques and no withdrawals were made from her account relating to these cheques. The tenant also stated that the landlord was falsely claiming utility charges from her. I explained to the tenant that the landlord had the burden of proof in seeking utility charges as part of the landlord's application for dispute resolution. As a result, the tenant withdrew her portion of the application relating to these issues identified as "Other" on the tenant's application.

The tenant's affirmed testimony provided during the hearing and her documentary evidence provided prior to the hearing was carefully considered in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to the return of her security deposit?
- Is the tenant entitled to the return of September, 2013 rent?

Background and Evidence

The tenant testified that the tenancy started on September 1, 2013 for a fixed term of one year to end on August 31, 2014. A written tenancy agreement, provided as evidence, was completed and the tenant paid a security deposit of \$425.00 on July 24, 2013 which the landlord still retains. Rent was payable by the tenant in the amount of \$850.00 on the first day of each month.

The tenant testified that she left the fixed term tenancy as the rental suite had been decommissioned and was not rentable because it did not comply with the city by-laws for secondary suites. The tenant testified that because of this she left the tenancy on September 28, 2013 without giving any written notice to the landlord to end the tenancy.

The tenant testified that she provided the landlord with a forwarding address on September 28, 2013 in writing. As a result, the landlord made the application to keep the tenant's security deposit on October 10, 2013.

The tenant claims that as the rental suite was an illegal suite and was 'non-rentable' by her for the following month, she is entitled to claim for October, 2013 rent in the amount of \$850.00 as compensation for this loss. The tenant also claims double the amount of the security deposit in the amount of \$850.00 for a total monetary claim of \$1,700.00.

Analysis

The tenant provided the landlord personally with a forwarding address in writing on September 28, 2013, in accordance with the requirements of the Act. Therefore the landlord had until October 13, 2013 to make an application to keep the tenant's security deposit. As a result, I find that the landlord made the application within the allowable time limits provided by the Act. Based on this, it is my finding that the doubling provision related to the tenant's security deposit does not apply in this particular case.

However, the landlord failed to appear for the hearing and as a result, I order the landlord to return the tenant's security deposit forthwith.

Section 45(3) of the Act explains that a tenant may end a fixed term tenancy by giving written notice if the landlord has breached a material term of the tenancy that was not corrected by the landlord after being given written notice of the failure.

As the tenant failed to give written notice to the landlord to end the tenancy and vacated the rental suite on September 28, 2013, the tenant is not entitled to monetary compensation for following month. Therefore, I dismiss this portion of the tenant's claim.

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 67 of the Act in the amount of **\$425.00**. This order may be served to the landlord if the landlord fails to return the security deposit forthwith and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord's application is dismissed without leave to re-apply.

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 08, 2014

Residential Tenancy Branch

