



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant seeking a monetary order for the refund of the \$1,200.00 security deposit and compensation for the first month rent in the amount of \$2,400.00. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be Decided

Is the tenant entitled to the return of the security deposit and a refund of the first month rent paid to the landlord?

Background and Evidence

The tenancy agreement was signed by the parties on August 12, 2014 for a tenancy that was supposed to commence on September 1, 2014. The agreement shows that the tenant paid the landlord \$1,200.00 for the security deposit and \$2,400.00 for the rent for the month of September 2014.

The tenant testified that, after they signed the contract and the landlord was given the two cheques, the landlord cancelled the contract before the tenant moved in. According to the tenant, the parties me and the tenant paid the landlord \$3,600.00 in cash to replace the cheques. The tenant testified that she expected the landlord to give back the two cheques, but this was never done. The tenant stated that the landlord issued two receipts for the payments, copies of which the tenant submitted into evidence. One receipt shows the tenant paid the landlord \$1,200.00 "*Deposit in cash*" and the second shows the tenant paid the landlord \$2,400.00 "*Rent in cash*". Both receipts were dated August 12, 2014.

The landlord disputed the tenant's testimony and stated that, after the tenant gave them the two cheques, they found that the cheque for the security deposit did not clear due to insufficient funds. The landlord testified that they chose not to try to cash the \$2,400.00 cheque for the rent and considered that the tenancy would not proceed.

The landlord denied that they received any cash payments from the tenant and pointed out that the copies of receipts placed in evidence by the tenant did not have landlord's signature at all, but merely included the landlord's name printed at the bottom of the receipt form. The landlord's position is that the tenant's claim should be dismissed.

Analysis

The Act provides that a tenancy is in effect once the parties make the agreement, whether or not the tenant has moved into the unit.

In this instance, the tenant is alleging that the landlord wrongfully terminated the tenancy before the tenant moved in, despite the fact that they had signed a tenancy agreement and the tenant is seeking a refund of monies paid to the landlord for rent as compensation and a refund of the security deposit.

I find that the burden of proof in a monetary claim is on the party making the claim. However, I find that the tenant has not offered sufficient evidentiary proof to prove that the tenant paid the funds in question to the landlord and therefore has failed to meet the burden of proof to support the monetary claim.

Based on the evidence before me, I find that the tenant's application seeking a monetary order for the return of rent allegedly paid and the security deposit has no merit. Accordingly, I hereby dismiss the tenant's application without leave.

Conclusion

The tenant is not successful in the application seeking the return of rent and the security deposit and the tenant's claim is dismissed without leave.

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: September 25, 2014

