



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 dealt with an application by the tenant seeking a monetary order and an order for the return of double the security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background, Evidence and Analysis

The tenancy began on October 1, 2012 and ended on February 28, 2014. The tenants were obligated to pay \$850.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$425.00 security deposit. Condition inspection reports were not conducted at move in or move out.

I address the tenants' claims and my findings around each as follows.

First Claim - The tenant is seeking \$210.00 for loss of wages in having to deal with this matter.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant stated that the loss of wages was a sole result of the landlords' actions. The tenant has failed to provide sufficient evidence to support her position. In addition the tenant has not satisfied me of grounds #1, #3 and # 4. Based on the insufficient evidence before me I dismiss this portion of the tenants claim.

Second Claim - The tenant is seeking \$425.00 for the landlord not complying with Section 38 of the Act. The parties were involved in a previous hearing in regards to the security deposit (file # 819433). The tenant is relying on that previous decision as evidence that the landlord breached Section 38 of the Act. The Arbitrator did not make a finding in that regard in that hearing. The Arbitrator in that hearing made a decision on June 5, 2014 and found that the tenants application for the return of double her security deposit was to be dismissed due to her not providing the landlord her forwarding address prior to the hearing.

The Arbitrator stated in their decision that "I clarify that the tenant has liberty to reapply for recovery of double the balance of her deposit from the landlord, in the event that it is not returned by the landlord". The parties stated that this was a little unclear and seek a definitive answer.

The Arbitrator made a finding on June 4, 2014 that the landlord was deemed to have the tenants forwarding address. The service of the tenants forwarding address was deemed served on June 4, 2014. The 15 day provision of Section 38 is then triggered from that day forward. The Residential Tenancy Policy Guidelines is clear that a landlord must within fifteen days; either file for dispute resolution or return the security deposit. Based on the tenants own testimony the outstanding \$51.59 was returned on June 19, 2014, within the legislated timeline. I dismiss this portion of the application.

The tenant has not been successful in her application.

Conclusion

I dismiss the tenants' application in its entirety.

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: October 27, 2014

Residential Tenancy Branch

