



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order. Despite having been served with the application for dispute resolution and notice of hearing via registered mail on July 30, the landlord did not participate in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The tenant's undisputed testimony is as follows. On June 4, 2014, the tenant responded to an advertisement and met with the landlord to view the rental unit. They agreed that the tenant would begin renting the unit on June 15 at a rate of \$600.00 per month. The tenant claimed that on June 4 she paid the landlord \$300.00 in cash as a security deposit. On June 9, the Ministry of Employment and Income Assistance (the "Ministry") sent the landlord a \$300.00 cheque for the security deposit. The tenant provided evidence that the cheque was negotiated by the landlord on June 11.

The tenant testified that on June 26 she paid the landlord \$600.00 for rent. On or about June 14 she moved her furniture into the home but was not given a key at that time. She testified that she tried to make arrangements with the landlord to pick up the keys to the unit but was unable to do so for various reasons. On July 8 the tenant finally received a key. She testified that she lived in the unit from July 14 – approximately July 23 at which time she vacated the unit because the landlord and his friends who lived upstairs in the home were excessively noisy and their lifestyle created offensive odours. The tenant claimed that she paid rent for July as well as for June.

The tenant seeks to recover all of the rent paid for the unit as well as the security deposit paid by her. She does not seek to recover the security deposit paid by the Ministry.

Analysis

The tenant bears the burden of proving her claim on the balance of probabilities. The tenant provided proof that she paid a \$300.00 security deposit on June 4 and that she paid \$600.00 in rent on June 26 as she has receipts for both of those payments. The tenant provided no evidence to corroborate her claim that she also paid for rent for the rental period running from July 15 – August 15.

I find that the tenant is entitled to the return of her security deposit. The landlord has not made a claim against it and the tenant has not authorized him to retain it. I award the tenant \$300.00. I am not awarding the tenant double her deposit because she has not provided proof that she served the landlord with her forwarding address prior to the time she filed her application for dispute resolution.

I dismiss the tenant's claim for the return of rent paid. The tenant has not provided evidence to corroborate her claim that she paid the landlord rent for the period from July 15 – August 15 and the email exchange that she provided showed that as late as July 21, one day after the tenant claimed that she had paid the rent, the landlord was still accusing her of not having paid. I find that the tenant has not proven that she paid rent for the second month.

While I accept that the tenant paid rent for the first month, I am unable to find that she is entitled to its return. The tenant moved her belongings into the rental unit prior to the start of the tenancy and although she did not have a key at that time, the emails she submitted into evidence show that she did not diligently pursue getting a key from the landlord until after July 1. I find that the tenant had possession of the unit by June 15.

Although the tenant claimed that she did not have quiet enjoyment of the unit from July 14-23, I find that she has only proven that she paid rent for 1 day of that time and I find that a loss of quiet enjoyment for one day is not compensable.

I grant the tenant a monetary order under section 67 for \$300.00 which represents the security deposit paid. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is awarded \$300.00 which represents her security deposit. The balance of her claim is dismissed 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: January 30, 2015

Residential Tenancy Branch

