



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This is an application for a monetary order for \$2250.00.

Some documentary evidence, photo evidence, and written arguments have been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the applicant established monetary claim against the respondent, and if so in what amount.

Background and Evidence

This tenancy began on April 1, 2014 and the tenant vacated on May 10, 2014.

No move-in inspection report was produced at the beginning of the tenancy.

The tenant paid a security deposit of \$750.00 on March 1, 2014.

The tenant served the landlord with a forwarding address in writing by registered mail that was mailed on August 5, 2014.

The landlord has not applied for dispute resolution to keep any or all of the security deposit; however the landlord stated that she has withheld the deposit because of outstanding rent and damages to the rental unit.

The tenant claims the landlord had agreed to pay for the cost of materials and labor if she painted the unit when she moved in and therefore she is asking for a monetary order for the cost of painting and labor.

The landlord denies ever agreeing to pay for the cost of painting the rental unit and in fact states that she was willing to paint the unit herself, however the tenant was in a rush to move in and stated that she would do it.

The landlord also stated that she is the owner of the rental unit, and her sister who has been named on this application for dispute resolution and only acted as an agent for her and therefore should not be named.

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. In this case the tenant has provided no evidence in support of her claim that the landlord agreed to pay for painting the rental unit and, in fact, it is just her word against that of the landlords and therefore since the landlord denies ever agreeing to pay for painting, the tenant has not met the burden of proving this portion of her claim.

With regards to the security deposit, Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on May 10, 2014 and the landlord had a forwarding address in writing by August 7, 2014 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a deposit of \$750.00, and therefore the landlord must pay \$1500.00 to the tenant.

Further, although the landlord does not believe her sister should be named as a respondent on this application, under the definitions of landlord in the Residential Tenancy Act, a person who acts as agent is also defined as a landlord and therefore the tenant did have the right to name the owners sister as a respondent.

Conclusion

I have allowed \$1500.00 of the tenants claim and have issued a monetary order in that amount. The remainder of the tenants 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: March 02, 2015

Residential Tenancy Branch

