



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, OLC, RPP

Introduction

This is an application brought by the Tenant requesting a Monetary Order in the amount of \$1050.00 and recovery of the \$50.00 filing fee.

The applicant testified that the respondent was served with notice of the hearing by registered mail that was mailed on October 23, 2015; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent has been properly served with notice of the hearing and I therefore conducted the hearing in the respondent's absence.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the tenant has established a monetary claim against the respondent, and if so in what amount.

Background and Evidence

The applicant testified that this tenancy began on September 1, 2015 with a monthly rent of \$700.00, and that a \$350.00 security deposit had been paid in August of 2015.

The applicant further testified that after paying \$700.00 rent to the landlord on October 2, 2015 the landlord rented her room to someone else, and she was not allowed back into the rental unit.

The applicant is therefore requesting an Order for the return of the rent she paid for the month of October 2015, and return of her full security deposit of \$350.00.

Under questioning the applicant stated that she has not given the landlord a forwarding address in writing.

Analysis

Security Deposit

The tenant has applied for the return of her security deposit; however the tenant did not give the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

Section 38 of the Residential Tenancy Act states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further section 39 of the Residential Tenancy Act states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Therefore since the tenant admits that she has not given the landlord a forwarding address in writing, the landlord is, at this time, under no obligation to return the security deposit and this application is therefore premature.

I therefore dismiss this claim for return of the security deposit with leave to re-apply, after a forwarding address has been served.

October Rent

I accept the applicant's testimony that she paid \$700.00 in rent to the landlord for the month of October 2015.

It is my finding that the applicant has shown that the landlord rented out her room to someone else for the month of October 2015.

It is my decision therefore that the landlord must return the rent \$700.00 rent that the tenant paid for the month of October 2015.

I therefore Order pursuant to section 67 of the Residential Tenancy Act that the landlord pay \$700.00 to the tenant.

I further Order pursuant to section 72 of the Residential Tenancy Act that the landlord reimburse the tenant \$50.00 for the filing fee paid for today's hearing.

Conclusion

I have issued a Monetary Order in the amount of \$750.00.

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: December 16, 2015

Residential Tenancy Branch

