



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant has filed an application seeking the return the deposit. The tenant testified and supplied documentary evidence that he served the landlord with the documentary evidence, the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on October 5, 2015, and deemed received under the Act five days later. The tenant has provided tracking information indicating the mail was unclaimed by the landlord. I find the Landlord has been deemed served in accordance with the Act.

The landlord stated that she sent one evidence package by regular mail but was unable to recall when she did that. The landlord stated that she “dropped off” a second evidence package to the Branch but not to the tenant, a day prior to this hearing. The tenant advised that he has not received any documentation from the landlord for this hearing. The landlord has failed to meet the requirement of serving documents in Accordance with Rules of Procedure 3.5 and 3.14, accordingly the landlords’ documentary evidence will not be considered when making a decision. The landlords’ oral testimony will be considered in making a decision. The hearing proceeded and concluded on that basis. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

The landlord’s testimony is as follows. The tenancy began on April 1, 2015 and ended on June 30, 2015. The landlord stated that the agreement was to be for a one year fixed term. Condition inspection reports were not conducted. The tenants were obligated to pay \$1675.00 per month in rent in advance and at the outset of the tenancy the tenants

paid \$837.50 security deposit. The landlord stated that the tenant “broke the lease”. The landlord stated that the unit was returned to her in very dirty and un-rentable condition. The landlord stated that she had to do a “dump run” to remove all the debris and garbage left by the tenants. The landlord stated that the tenants still owe money for gas, electricity, and the cable boxes that they requested. The landlord stated that due to the poor condition of the unit she was unable to rent it for July 2015 and seeks the loss of revenue.

The landlord is applying for the following:

1.	Loss of Revenue July 2015	\$1,675.00
2.	Utilities	\$158.05
3.	Carpet Cleaning	\$367.50
4.	Dump Run	\$150.00
5.	Cable Box	\$104.50
6.	Filing fee	\$50.00
	Total	\$2,504.55

The tenant gave the following testimony. The tenant stated that the tenancy was on a month to month basis and not a fixed term. The tenant stated that the landlord was abusive from the outset of the relationship and that she told the tenant and his roommate to move out. The tenant stated that he denies each of the landlords’ claims as he has paid up all costs associated with this tenancy. The tenant stated the unit was left in “pristine” condition and that the landlord is not being truthful in her depiction of the unit at move out. The tenant stated that he gave the landlord his forwarding address when he gave notice to move out on June 1, 2015. The tenant stated that he and his roommate have parted ways and that all he seeks is his half of the security deposit which is \$418.75.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord has no documentary evidence to support their claim; I'm left with just their oral testimony. I found the landlords testimony to be contradictory and unreliable. Based on the insufficient evidence before me, I dismiss the landlords' application in its entirety.

I am satisfied that the tenant provided his forwarding address to the landlord in June 2015. I find that the tenant is entitled to the return of his share of the security deposit as he has requested in the amount of \$418.75.

Conclusion

The tenant has established a claim for \$418.75. I grant the tenant an order under section 67 for the balance due of \$418.75. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 27, 2016

Residential Tenancy Branch

