



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

The tenant applies for a monetary award for return of a \$900.00 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “RTA”) and for \$250.00 claimed to be owed by the landlord for a washer and dryer.

The landlord filed 34 pages of material in support of his position. He attempted to deliver a copy of it to the address for delivery given by the tenant in her application. She had moved without providing a new address for delivery. No one at the old address would accept the landlord’s material. At this hearing the documentation filed by the landlord was described to the tenant and she agreed to proceed without having received a copy of it.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Subject to the foregoing, only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the tenant pay a security deposit? Has she provided the landlord with a forwarding address in writing so as to trigger the operation of s. 38? Did the landlord purchase the tenant’s washer and dryer and fail to pay?

Background and Evidence

The rental unit is a three bedroom house. The tenancy started in January 2012 and ended March 31, 2014. The tenant's late husband was a co-tenant. He passed away in February 2014.

The parties conducted a move out inspection at the end of the tenancy. The tenant did not at that time provide a forwarding address in writing. She met with the landlord almost a year later, on March 27, 2015 at a coffee shop, and gave it in writing then as part of a letter to the landlord. Her father Mr. H. W. confirmed that fact. The landlord, I find, does not have a clear recollection of what went on at that meeting and I find it more likely than not that the forwarding address in writing was provided at that time.

The written tenancy agreement signed by the tenants in December 2011 calls for payment of a \$900.00 security deposit by December 6, 2011. The landlord produces a copy of a cheque dated December 6, 2011 from the tenants for the deposit money and a bank statement showing that the cheque was dishonoured. He says the tenants never made good on the cheque and that he has never received the security deposit money.

He says that the tenants were good tenants though he had trouble getting rent on time and so he did not pursue them for the payment of the deposit money.

The tenant says she and her late husband paid the landlord cash for the deposit after the deposit cheque bounced. She did not get a receipt for that payment.

The tenant says that at the end of the tenancy she did not want to move the washer and dryer she and her late husband had purchased at the start of the tenancy. She asked the landlord if he wanted to buy them, he said he did, and a \$250.00 price was agreed to.

The landlord says he was selling the property at the time and merely offered to the tenant that he would see if the new owners wanted the two appliances. The new owners didn't want them. He says that he stored the two appliances for a number of months. He says the tenant was difficult to contact. He had no address for her and his telephone and electronic attempts to reach her did not meet with success. Eventually he disposed of the appliances by taking them to the "free store" at the local dump.

Analysis

The tenant has failed to prove that a security deposit was paid.

The obligation to show proof of payment is on her. The tenancy agreement does not prove payment, only that a payment was required. Without a receipt or some other tangible proof of payment after the security deposit cheque bounced, the tenant has not satisfied the burden of proof.

This item of the claim is dismissed.

Similarly, the tenant's claim for recovery of the price of the washer and dryer is dismissed. Her version of events regarding sale to the landlord is convincing, but so is the landlord's version. The onus to establish a purchase agreement is on the one alleging it; the tenant in this case, and she has not proved such an agreement on a balance of probabilities.

Conclusion

The tenant's application must be dismissed.

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: August 18, 2016

Residential Tenancy Branch