



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF.

Introduction.

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for the return of double the security deposit, for compensation for harassment and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

These parties had attended a hearing on March 21, 2016. Both parties had made application. The tenant did not attend. The Arbitrator ordered the landlord to retain the security deposit. Since the issue of the return of the security deposit has already been dealt with, *it is res judicata* and was not addressed during this hearing.

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Therefore the tenant's application for the return of double the security deposit is dismissed. This hearing only dealt with the tenant's claim for compensation and for the recovery of the filing fee.

Issues to be decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started in July 2014 and ended on July 01, 2015. The monthly rent was \$1,250.00.

The tenant stated that she returned to the apartment building at 2am on July 01, 2015 and her building access fob would not work. She stated that the on-site manager let her in. The tenant believes that the landlord deactivated her fob but stated that the on-site manager apologized to her for the inconvenience and let her into the building. The tenant agreed that access to her suite had not changed.

The landlord denied having deactivated the fob on that date and stated that this was done after the tenant had moved out and returned the keys and fob to the manager. The tenant is claiming \$2,500.00 as compensation for the inconvenience endured.

The tenant is also claiming compensation in the amount of \$2,038.40 for furniture that she was forced to sell to raise funds to put a security deposit down on a new rental unit.

The tenant stated that the landlord accessed her suite on June 29, 2016, without permission or proper notice. The landlord denied having entered the rental unit and stated that he placed a copy of the tenancy agreement in the door jamb. The agreement also contained instructions and information required for a move out. The tenant agreed that the agreement was in the door jamb but stated that the landlord would have had to open the door to place it there. The tenant's son found the agreement and became anxious and stressed out. The tenant agreed that she was not aware of any other "unlawful entry" on the part of the landlord.

The tenant is claiming \$3,000.00 for the pain and suffering that the landlord caused her with his illegal entry and \$100.00 for the filing fee.

The total claim that the tenant is making for all the above items is \$7,638.40.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the 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.

In this case, the tenant claimed that the landlord disabled the fob which granted her access to the building, a few hours prior to the move out. The landlord denied having done so. The tenant also added that she was granted access along with an apology from the on-site manager. The tenant agreed that her access to the rental unit was not changed.

Based on the conflicting testimony of both parties, I find that the tenant has not proven that the landlord deliberately disabled her fob to the building and therefore her claim for compensation in the amount of \$2,500.00 is dismissed.

The tenant's claim for \$2,038.40 for loss of value of her furniture is also dismissed as the landlord is not responsible for the method chosen by the tenant to raise funds for a future security deposit.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".

The tenant stated that the landlord harassed her by entering the rental unit without notice. The landlord denied having done so and the tenant did not file sufficient evidence to prove that the landlord had done so. Even though interaction between the parties caused the tenant and her son some anxiety, I find that the actions of the landlord do not fit the definition of harassment.

Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for harassment and stress. I therefore dismiss this portion of the tenant's application.

The tenant has not proven her case and must bear the cost of filing her own application.

Conclusion

The tenant's application is dismissed in its entirety.

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 31, 2016

Residential Tenancy Branch

