



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, FF

On August 3, 2016, the Tenant made an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 24, 2016, and for a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The matter was set for a conference call hearing. Both the Landlord and the Tenant attended the teleconference hearing.

The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The parties testified that the Tenant moved into unit #304 on March 1, 2015. The tenancy was a fixed term for three months to continue thereafter as a month to month tenancy. Rent is \$746.00 per month. The Tenant paid the Landlord a security deposit of \$362.50.

Prior to moving into unit #304, the Tenant submits that she lived in unit #407 and paid the Landlord a \$450.00 security deposit.

The Landlord issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 24, 2016. The 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$608.00 that was due on May 1, 2016.

The Tenant testified that on May 27, 2016, she received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 24, 2016. The Tenant testified that she did not owe the Landlord the amount of money indicated within the 10 Day Notice. She testified that she previously made a payment to the Landlord, but the Landlord lost part of her payment. The Tenant testified that she did not dispute the 10 Day Notice because she decided to pay the outstanding amount within 5 days. The Tenant provided evidence that she paid the \$608.00 on May 30, 2016.

The Tenant is now seeking to recover the \$608.00 payment that was made to the Landlord on May 30, 2016.

The Tenant testified that on February 1, 2014, she paid the Landlord \$2,375.00. The Tenant submits that the payment was made by debit card and by cash. She submits that she paid \$1650.00 by debit card and \$750.00 in cash. She submits that the payment was towards rent, the security deposit and a late fee. The Tenant provided documentary evidence of a receipt from the Landlord in the amount of \$2,375.00. The receipt indicates it was received from the Tenant for rent and an outstanding security deposit for unit #407.

The Tenant has provided documentary evidence of a Tenant Ledger from the Landlord that shows the Landlord processed a payment of \$1,650.00 from the Tenant on February 3, 2014.

The Tenant submits that the same Landlord, B.W., that accepted her payment on February 1, 2014, recently attended the Property Management office of the Landlord and made a \$700.00 payment on her behalf. The Tenant submits that the payment by the Landlord is an admission of guilt, and that all of the late fees and harassment she has suffered is due to the actions of the Landlord B.W.

The Landlord T.P. testified that she has no record of receiving a security deposit from the Tenant when she was residing in unit #407. The Landlord agreed that the amount of \$608.00 as stated within the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 24, 2016 was paid by the Tenant.

The Landlord P.K. testified that her records indicate the Tenant paid \$2,375.00 then requested to have \$725.00 returned to her.

The Landlord B.W. who received the payment from the Tenant testified that to the best of his knowledge he remembers receiving the payment from the Tenant and issuing a receipt. He testified that he is not 100% sure but he recalls returning cash to the Tenant, but he does not recall issuing a new receipt. The Landlord B.W. testified that in August 2016 he made a payment of \$700.00 on behalf of the Tenant because he feels the problem all falls back to him. He testified he paid the money to make life easier.

The Tenant testified that she did not ask the Landlord to return \$725.00 in cash to her. She submits that she had just received a settlement from ICBC and had \$6,000.00 in the bank.

Analysis

Based on the testimony of the parties, the evidence before me, and on a balance of probabilities I make the following findings:

I find that the Tenant paid the Landlord \$2,375.00 on May 1, 2014. I do not accept the Landlords testimony that he returned \$725.00 to the Tenant. The Landlord B.W. testified that the Tenant paid him and that he issued a receipt. The Tenant has produced a receipt issued by the Landlord in the amount of \$2,375.00. The Tenant Ledger does not record the \$725.00 cash payment that the Tenant submits was made, and the Landlord B.W. has taken responsibility for the missing money by making a payment on the Tenant's behalf.

I find that the \$608.00 payment that the Tenant paid to the Landlord in response to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 24, 2016, is an over payment of rent. I find that the Landlord received \$725.00 in cash from the Tenant on February 1, 2014, and the Tenant did not owe \$608.00 for unpaid rent that was due on May 1, 2016. The Landlord P.K. did not provide sufficient evidence to support her testimony that her records indicate the Landlord returned \$725.00 to the Tenant.

The Landlord P.K. also testified that she has no record of receiving a security deposit from the Tenant when the Tenant was residing in unit #407; however the receipt issued on February 1, 2014 by the Landlord B.W. indicates the Tenant's payment was towards rent and an outstanding security deposit for unit #407. I find that the Tenant did pay the security deposit for unit #407.

With respect to the over payment of rent from the Tenant, the Landlord testified that she does not believe that the Tenant is owed any amount of money. However the Landlord did not submit any evidence for the hearing, did not clarify any claim, and did not make an Application against the Tenant claiming money or compensation. The only application I have before me is from the Tenant asking for \$608.00.

I find that the Landlord owes the Tenant the amount of \$608.00 for an over payment of rent. I grant the Tenant a monetary order in the amount of \$608.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

Conclusion

The Tenants' application is successful. The Landlord owes the Tenant \$708.00 comprised of \$608.00 for an over payment of rent and the \$100.00 for the filing fee.

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: September 27, 2016

Residential Tenancy Branch