



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for the return of the security deposit, return of rent for the last month of tenancy and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

During the hearing the tenant informed me that she had already received the security deposit within 15 days of her moving out. Accordingly, this hearing only dealt with the tenant's application for the return of rent and for the recovery of the filing fee.

Issues to be Decided

Is the tenant entitled to the return of rent and the recovery of the filing fee?

Background and Evidence

The tenancy started on December 21, 2015. The monthly rent was \$600.00 and prior to moving in the tenant paid a security deposit of \$300.00.

Both parties agreed that on February 02, 2016, the tenant gave the landlord notice to end the tenancy effective February 16, 2016. The tenant moved out on February 16, 2016 and provided the landlord with her forwarding address.

The landlord returned the security deposit to the tenant on February 26, 2016. The tenant acknowledged having received the deposit on February 29, 2016.

The tenant stated that during the tenancy, the landlord would enter the rental unit every day while the tenant was away at work and turn off the television and lights. The tenant stated that on one occasion, the landlord rearranged the items in the kitchen cabinets.

The landlord denied having entered the rental unit in the absence of the tenant. The landlord stated that she did enter once after having verbally informed the tenant that she would be getting the kitchen countertops installed. The landlord also stated that the tenant had a smart television that turned off automatically when not in use.

The tenant stated that she feared for her safety and therefore on February 02, 2016, the tenant gave notice to move out. The tenant has applied for the return of rent for the month of February.

The landlord testified that despite the inadequate notice to end tenancy, the landlord mitigated her losses by starting a search for a new tenant immediately. A tenant was found for March 01, 2016 and the landlord did not suffer a loss of income.

Analysis

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

The tenant gave notice to end the tenancy on February 02, 2016 and moved out on February 16, 2016. The tenant stated that the reason for moving out was that the landlord entered the rental unit on a regular basis, without permission and in the absence of the tenant. The landlord denied the allegations.

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.

The tenant did not provide sufficient evidence to demonstrate that the landlord had entered the rental unit multiple times in her absence and without permission. Even if the tenant had provided additional evidence to support her testimony, the tenant had the option of applying for dispute resolution to resolve the alleged problem instead of ending the tenancy by providing inadequate notice.

The tenant occupied the unit for approximately half of February and therefore is not entitled to the return of rent for February.

The tenant has not proven her case and must therefore bear the cost of filing her 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: September 20, 2016

Residential Tenancy Branch