



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

Both parties testimony was taken under affirmation.

During the conference call the tenant stated that she has not submitted any evidence related to her application, only evidence related to the landlord's application, however she states that the evidence submitted for the landlords application also relates to her application.

It is my decision that the evidence package submitted by the tenant can only be used in response to the landlords cross application, however the evidence cannot be used towards her application, as it was not filed with the Residential Tenancy Branch, or served on the landlord within the time frame required in the Residential Tenancy Branch Rules of Procedure.

Further, it is also my finding that the tenant unreasonably delayed the service of evidence for her application, as her application was filed August 9, 2016, and she submitted no evidence until January 24, 2017, even though the rules of procedure state that evidence must be served and submitted as soon as reasonably possible.

Issue(s) to be Decided

The issues are whether the landlord or the tenant has established monetary claim against the other, and if so in what amount.

Decision and Reasons

This tenancy began on July 1, 2015 and the tenant vacated the rental unit on May 30, 2016.

The tenant is requesting a monetary order of \$3900.00 against the landlord, however since the tenant has provided no evidence in support of this claim it is my finding that I will not be issuing any order in favour of the tenant.

The tenant has stated that evidence she has provided towards the landlords claim also relates to her claim, however it is my decision that, since this evidence was not received within the required timeframe, and was not submitted as soon as reasonably possible, I will not accept this evidence with regards to the tenants application.

The tenant's application has therefore been dismissed for a total lack of evidence.

With regards to the landlord's application, the landlord has supplied evidence that shows that he has already accepted a settlement with the tenant with regards to the issues in question.

The landlord had previously sent the tenant an e-mail attempting to get the tenant to agree to allow him to keep the security deposit and the pet deposit to cover damages, legal fees, and utility charges, and in response to that e-mail the tenant replied as follows:

Hi Nathan,

I disagree with you keeping any portion of the pet and damage deposit. You collected \$650 for a pet deposit and \$1300 for security deposit. You are only allowed to collect damage deposits up to 50% of the rent. Therefore you collected \$650 more than you are allowed. Please forward the entire \$1950 to me or at the very least the amount of the overpayment to my new address:

The landlord stated that since the tenant said "at the very least the amount of the overpayment", he took this as an agreement from the tenant to settle his damages and debt claim against her by allowing him to retain \$1300.00, and him reimbursing her \$650.00, and he therefore agreed, in a subsequent e-mail, to return \$650.00 and he did return that amount.

It is my decision therefore, that, since the landlord has stated that he agreed to settle with the tenant by keeping the \$1300.00 and returning \$650.00; he is bound by that agreement and cannot now file a claim against the tenant with regards to the same issues.

The landlord's application is therefore also dismissed.

Conclusion

The tenant's application is dismissed in full without leave to reapply.

The landlord's application is dismissed in full without leave to reapply.

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: February 06, 2017

Residential Tenancy Branch