



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance I confirmed service of documents. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord testified that she was out of town and upon her return did not have sufficient time to file evidence of her own. I find that the tenant was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

Is the tenant entitled to the return of double the security deposit?

Background and Evidence

As per the tenancy agreement filed into evidence by the landlord, the tenancy started on November 01, 2010 for a fixed term ending on February 28, 2011. The monthly rent was \$3,000.00 due on the first of each month.

The parties agreed that the tenancy actually started in July 2009 at which time the tenant's spouse paid a deposit of \$1,500.00. In October 2010 the tenant's spouse moved out and the tenant assumed the tenancy including the security deposit. The tenancy agreement filed into evidence was the one the landlord and tenant entered into in November 2010 after the departure of the tenant's spouse.

The landlord testified that the tenant was having difficulty finding a place and therefore on November 01, 2010, the parties entered into an agreement for a fixed term of four months ending February 28, 2011. The landlord stated that in order to assist the tenant financially, to put down a deposit on a new place, she agreed to allow the tenant to use the deposit that she had in her possession towards the last month's rent. The landlord stated that this was a term added to the addendum at the tenant's request. The term is handwritten and signed by both. The term states "*Last month rent is \$1,500.00*"

The landlord testified that at the time the tenant's spouse was moving out, she did a walk through and found that everything except for the carpet was in good order and that the tenant was very clean and neat. The landlord stated that based on the walk through she trusted that the tenant would leave the rental unit in a good condition and felt that it was ok to allow the tenant to use the security deposit towards the last month's rent.

The tenant testified that there were discrepancies in the house that needed to be fixed and that the landlord did not get the work done in a timely manner. The tenant stated that some of the items never got fixed and therefore the landlord agreed to give the tenant a rebate of \$1,500.00 off the rent of the last month of tenancy. The landlord testified that the home was brand new and had been granted an occupancy certificate by the local municipality in February 2009 and therefore was not in need of repair or maintenance.

The tenancy was a fixed term agreement that would end on February 28, 2011 and would continue on a month to month basis at the end of the fixed term. The tenant did not move out at the end of the fixed term and continued to occupy the rental home for an additional 8 years. The tenant moved out on February 28, 2019.

Both parties agreed that the tenant paid \$1,500.00 for the last month's rent. The landlord testified that she acknowledged that she had allowed the tenant to use the deposit to cover the balance of rent. The landlord also testified that she found the unit dirty and in need of maintenance as the tenant's hydro and gas had been cut off for a few months prior to the end of tenancy.

The landlord testified that since she had given the tenant her word that he could use the security deposit towards the last month's rent, she accepted \$1,500.00 instead of \$3,000.00 as rent for the month of February 2019

On March 06, 2019 the tenant sent the landlord a letter by registered mail asking for the return of the deposit. The tenant also filed this application on March 27, 2019.

Analysis

In this case, the landlord maintains that as per the tenancy agreement, the tenant used his security deposit towards rent and therefore she was not holding a deposit. The tenant maintained that the landlord gave him a break of \$1,500.00 off the last month's rent for work that was pending completion in the rental home. The hand-written term in the tenancy agreement regarding the last month's rent did not explain the reason for the rent rebate of \$1,500.00.

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.

I must now determine on a balance of probabilities whether the tenant has used his security deposit towards rent or as compensation for discrepancies in the rental unit. In this case I find that I prefer the testimony of the landlord for the following reasons:

- If there were items that required completion or repair, the tenant would have requested a rent reduction for the month that these items were not available for his use. It is not likely that the tenant would wait for eight plus years to be compensated for incomplete work around the rental unit.
- The house was brand new at the start of tenancy and had received an occupancy certificate from the local municipality, about 8 months prior to the start of tenancy. Accordingly it is more likely than not that most elements of the new home had been inspected and approved of by the municipality.
- The tenant did not file any evidence to support his testimony that he requested maintenance/repairs and that the landlord failed to respond or comply.
- If the rental unit was in need of repairs/maintenance and the landlord did not respond to the tenant's requests for action, the tenant had the option of applying for dispute resolution to obtain an order directing the landlord to carry out repairs/maintenance.
- I find that if the rental unit had discrepancies, the tenant could have moved out but chose to continue to occupy the unit for an additional 8 years after his spouse moved out.

- I accept the landlord's testimony that she wanted to assist the tenant in finding a new home when his spouse moved out and therefore agreed to let him use the security deposit as rent for the last month of tenancy.
- I also accept the landlord's testimony that she found the tenant to be neat and clean and therefore felt it was ok to allow the tenant to use the deposit towards rent for the last month as she did not anticipate that she would need to use the deposit towards cleaning and/or repair.

Based on the evidence filed by the tenant and the verbal testimony during the hearing, I find on a balance of probabilities that it is more likely than not that the landlord allowed the tenant to use the security deposit towards the last month's rent. I further find that on a balance of probabilities that the rental unit was not in need of repairs and that it is more likely than not that the landlord did not give the tenant a rebate equal to a half the rent due for the last month of tenancy, for discrepancies in the rental unit.

I find that the landlord is not holding a deposit and therefore the tenant is not entitled to the return of the security deposit. Accordingly the tenant's application is dismissed.

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: April 26, 2019

Residential Tenancy Branch