



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDS, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for the return of personal property, for a monetary order for money owed, pursuant to section 51 of the Act, for the return of security deposit and to recover the cost of the filing fee.

Both parties appeared, gave 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 at the hearing.

The landlord testified they received the tenant's evidence. The tenant stated that they have not received the landlord's evidence. The landlord stated that their package was sent to the tenant and was confirmed it was delivered. The tenant indicated they have not checked their mailbox.

In this case, I have allowed the landlord's evidence that relate to the ending of the tenancy. I find it not prejudicial to the tenant, as the tenant acknowledged that they are aware of the documents and that they signed them.

During the hearing the tenant indicated that they are withdrawing their claim for return of personal property, as they have no intent of returning to pick them up. Therefore, I dismiss this portion of the tenant's claim without leave to reapply.

Issues to be Decided

Is the tenant entitled to monetary compensation pursuant to section 51 of the Act?
Is the tenant entitled to the return of the security deposit?

Background and Evidence

The tenancy began on November 1, 2009. Rent in the amount of \$1,500.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenant. The tenancy ended on December 31, 2018.

The tenant testified that they received a Two Month Notice to End Tenancy for Landlord's Use of Property on November 30, 2019, with an effective date of January 31, 2019. The tenant stated that the landlord did not use the premise for the stated purpose and should be entitled to the equivalent of 12 months of rent.

The landlord testified that the tenant was served with the Notice and there was an agreement to extend the date to February 28, 2019. The landlord stated that after that date the parties agreed to mutual end the tenancy effective December 31, 2018. Filed in evidence is a mutual agreement to end the tenancy.

The tenant testified that the landlord gave them money at the end of the tenancy; however, it was for two months compensation of rent as the tenancy was to end February 28, 2019, which is two months. The tenant seeks the return of their security deposit.

The landlord testified that the money given to the tenant was the security deposit and not compensation for two months of rent. Filed in evidence is a copy of the cheque.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept the tenant was served with Notice to end the tenancy; however, the parties agreed later my mutual agreement to end the tenancy. I find the Notice issued November 30, 2019, had not force or effect as the mutual agreement to end the tenancy signed on December 31, 2019, supersede any previous documents. Therefore, I find the tenancy legally ended by the mutual agreement and the tenant is not entitled to compensation.

I am satisfied that the tenant received their security deposit at the end of the tenancy. The cheque issued to the tenant by the landlord is dated December 31, 2018, the day

the tenancy ended. The cheque is marked deposit, and shows that both parties signed for the release of the cheque.

While the amount written in the cheque is greater than the amount the tenant was entitled to receive for the return of the security, that is not an issue for me to consider as the landlord is entitled to assist a tenant if they feel appropriate. There is no provision under the Act that would entitle the tenant to receive compensation that is equal to two months of rent.

I find the tenant received their security deposit on December 31, 2018. I find the tenant has failed to prove a violation of the Act. Therefore, I dismiss this portion of the claim.

In light of the above, I find I must dismiss the tenant's application. As the tenant was not successful, I find the tenant is not entitled to recover the cost of the filing fee.

Conclusion

The tenant's application is dismissed.

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: July 30, 2019

Residential Tenancy Branch