



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

MNSD, MNDC

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant for a monetary order for the refund of double the security deposit and compensation for damage or loss under the Act including moving costs. The total amount of the damages being claimed was \$2,050.00.

Both the landlord and tenant were present and each gave testimony in turn.

Issues to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit retained by the landlord and damages for moving costs.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination depends upon the following:
 - Did the tenant pay a security deposit and pet damage deposit?
 - Did the tenant furnish a forwarding address in writing to the landlord?
 - Did the tenant provide written consent at the end of the tenancy permitting the landlord to retain the security deposit or any portion thereof?
 - Was any order issued permitting the landlord to retain the deposit?
 - Has the tenant submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing that the losses were incurred due to the actions of the landlord in violation of the Act or tenancy agreement and proven that the amount or value being claimed is justified?

The tenant has the burden of proof to establish that the deposit existed. The landlord has the burden of proof to show that the landlord had a legal right to retain the security deposit or that the landlord had refunded the deposit. In regards to the monetary claim for damages, the burden of proof is on the tenant/claimant.

Background and Evidence

The tenancy began with a male and female co-tenant sharing the suite in April 2010 and the rent was \$1,150.00. A security deposit of \$775.00 was paid. According to the applicant/tenant, due to difficulties between the co-tenants the applicant tenant found that she could not stay in the unit. However, she did not give written notice to end the tenancy to the landlord. The tenant stated that she made it clear that she was not intending to vacate the unit permanently and end the tenancy until July 2010. The tenant stated that she asked the landlord to terminate the tenancy with the co-tenant for Cause, but the landlord felt that this could not be done under the Act as there was not sufficient cause and also if the tenancy was ended this termination would apply to both co-tenants, not just one .

The male co-tenant still in the unit also did not give any written Notice to end the tenancy. However in May 2010 the male co-tenant changed the locks and gave a key to the landlord. The landlord testified that they believed that the female co-tenant had permanently abandoned the unit. Shortly thereafter, the landlord and the male co-tenant decided to end the current tenancy and enter into a new agreement between the male co-tenant and the landlord. According to the landlord, when the old tenancy agreement with the two co-tenants was accepted as ended, the security deposit was promptly refunded to the male co-tenant in full.

The tenant's position is that her co-tenancy was never properly ended as neither co-tenant had ever given written notice to end the tenancy and the landlord had therefore re-rented her suite while she was still entitled to possession. The tenant is seeking a return of half the rent paid for May, moving costs and transportation costs. The tenant is also seeking double her portion of the security deposit, as her forwarding address was provided to the landlord more than 15 days before the application.

A mediated discussion ensued and the parties agreed that the tenant would be refunded \$387.50 representing her portion of the security deposit in full satisfaction of all claims.

Conclusion

Based on the mutual agreement reached between the parties during these proceedings, I find that the tenant is entitled to total monetary compensation of \$387.50, and I hereby

grant a monetary order in this amount. The remainder of the tenant's application is dismissed without leave.

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: March 2011.

Residential Tenancy Branch