



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order to keep the security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenant on December 11, 2010. The tenant confirmed she had received the hearing documents

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on April 06, 2010. There was a verbal agreement in place for this tenancy and rent was \$750.00 per month which was due on the 1st of each month. The tenant paid a security deposit of \$375.00.

A previous hearing between these parties was held on November 04, 2010. At that hearing the tenant was the applicant and failed to appear for the hearing. Her application was dismissed and the landlord was awarded an Order of Possession for March 31, 2011. He states the tenant gave him verbal notice to end her tenancy on November 11, 2010 and moved from the rental unit on December 02, 2010. The tenant provided written notice and her forwarding address on December 08, 2010.

The landlord states due to the insufficient Notice given by the tenant he was seeking to recover unpaid rent for December, 2010 however he states he will settle for an Order just to keep the security deposit of \$375.00 in full and final settlement of his claim and withdraws his application for a Monetary Order to recover unpaid rent and to recover his filing fee.

The tenant testifies that she is not familiar with the *Act* and gave the landlord three weeks' Notice to end her tenancy as she was given an eviction notice on September 30, 2010. She states the landlord agreed to give her more time to find a new home until the Spring, 2011; she states at that point she was willing to leave and thinks it is unfair that he can keep her security deposit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 45 of the *Act* states:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this matter the landlord had been given an Order of Possession that was not effective until March 31, 2011 however the tenant decided to end the tenancy early and failed to provide the

landlord with the proper notice to end the tenancy. Consequently, the landlord would be entitled to recover unpaid rent for December, 2010. However, the landlord has withdrawn this section of his claim and now only seeks to keep the security deposit in satisfaction of his claim.

As the landlord has established that improper notice was given by the tenant; section 38(4)(b) of the *Act* states:

A landlord may retain an amount from a security deposit or a pet damage deposit if,

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Consequently it is my decision that the landlord may keep the tenants security deposit of **\$375.00**.

Conclusion

The landlords' application to keep the security deposit is upheld.

The remainder of the landlords' application has been withdrawn by the landlord and is therefore dismissed 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: April 19, 2011.

Residential Tenancy Branch