



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Preliminary Issues

The Tenant included a monetary order worksheet as part of his application for dispute resolution which clearly indicates the Tenant is seeking the return of his damage deposit; therefore the Landlord was made aware of the Tenant's request in the initial application.

Based on the aforementioned I amend the application to include the request for the return of the Tenant's security deposit pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

Issue(s) to be Decided

1. Is this a landlord/ tenant relationship which falls within the jurisdiction of the *Residential Tenancy Act*?
2. If so, has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, has the Tenant met the burden of proof to obtain a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed she did not send copies of her evidence to the Tenant. I informed her that her documentary evidence would not be considered in my decision.

The Tenant affirmed he entered into a verbal tenancy agreement with the Landlord with rent payable on the first of each month in the amount of \$525.00. He was able to begin moving in April 30, 2011 and paid rent as of May 1, 2011 and on or just before May 1, 2011 he paid \$262.50 as the security deposit. The rental unit was a house that he shared with the Landlord, her boyfriend and another male tenant.

The Tenant advised that he got into a disagreement and altercation with the other male tenant during the first week of June 2011 where he requested assistance from the Landlord. The incident pertained to personal issues and was not about the tenancy. He stated that although the other tenant threatened him he did not want to get the police involved and was relying on the Landlord to assist in resolving the issue.

When the Landlord stated she was not getting involved and was going out of town he felt he had to vacate the rental unit and end his tenancy instead of dealing with the other tenant's "crazy threats". The Tenant confirmed he left the rental unit June 6, 2011, leaving his possessions in the unit until June 30th or July 1, 2011. Once he removed his possessions he left his key inside the rental unit.

The Tenant stated he informed the Landlord he ended his tenancy in an e-mail sent on June 10, 2011, a copy of which was provided in his evidence. He is seeking \$507.50 as a refund of his rent which is comprised of \$420.00 for the 24 days of June 6 – 30, 2011 plus \$ 87.50 that he had pre-paid for July 2011 rent. He is of the opinion that he is entitled to this refund as he did not occupy the rental unit because of the argument between him and the other tenant.

The Tenant advised that he is also seeking the return of his security deposit of \$262.50. He confirmed he did not provide the Landlord with his forwarding address, in writing prior to making his application for dispute resolution. His application has his forwarding address listed on it so the Landlord has been given his address.

The Landlord stated she was of the opinion that this was a roommate situation because she does not own the house. She confirmed she rented the space to the Tenant, she collected the security deposit, and rent was payable from the Tenant to her.

The Landlord advised she was made aware of the argument between the Tenant and the other male tenant when the Tenant's girlfriend called them. The Landlord's boyfriend spent several hours on the phone with them trying to mediate the dispute but to no avail. They told the Tenant they would not get involved in their personal disagreement.

The Landlord said she made arrangements for the Tenant to have the rental property to himself during their absence but he chose not to return. They attempted to contact the Tenant when they returned as they saw that his possessions were left in the rental unit. The Tenant sent her an e-mail wanting the return of his rent and when she refused he said he was going to arbitration. She confirmed the Tenant did not send her his forwarding address prior to sending her his application for dispute resolution.

Analysis

The Landlord confirmed she did not provide the Tenant with copies of their evidence in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

A “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

After careful consideration of the evidence before me I find the Landlord, as named in this application, entered into a verbal tenancy agreement with the Tenant, collected a security deposit and monthly rent. In doing so she exercised rights of a landlord under a tenancy agreement and/or this Act in relation to the rental unit. Accordingly I find this to be a residential tenancy agreement that falls within the jurisdiction of the *Residential Tenancy Act*.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The Tenant contends that he was forced to end his tenancy because of a personal dispute he had with another Tenant. Personal disputes are not matters governed by the *Residential Tenancy Act*; therefore there is insufficient evidence before me to prove the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement.

Section 45(1) of the Act provides that 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 case the Tenant abandoned the rental unit and informed the Landlord on June 10, 2011 he had ended his tenancy. Considering the June 10, 2011 as written notice to end the tenancy this tenancy ended effective July 31, 2011, pursuant to section 45(1) of the Act listed above. As per the aforementioned the Tenant is required to pay rent in accordance with the tenancy agreement pursuant to section 26 of the Act, and is therefore not entitled to return of rent paid. Accordingly I dismiss the Tenant's request for \$507.50 (\$420.00 + \$87.50).

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Section 38 (6) of the Act stipulates that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Section 39 of the Act provides that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, (a) the landlord may keep the security deposit or the pet damage deposit, or both, and (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The evidence supports that at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit as the Tenant had not provided his forwarding address in writing and therefore this application is premature. Accordingly I dismiss the Tenant's claim for return of his security deposit, with leave to re-apply.

During the hearing the Tenant stated that the address on his application for dispute resolution is his present forwarding address; therefore the landlord is considered to have received the Tenant's forwarding address in writing as of the hearing date of October 13, 2011.

The Tenant has not been successful with his application; therefore he must bear the burden of the cost to file his application.

Conclusion

I HEREBY DISMISS the Tenant's application for the return of his security deposit with leave to reapply. The balance of the Tenant's application is 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: October 14, 2011.

Residential Tenancy Branch