



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the “Act”) for return of the security deposit paid to the landlord and for compensation for loss or damage under the Act, regulation, or tenancy agreement.

Both the tenant and the landlord attended the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and had the opportunity to present their evidence orally and in written and documentary form, to make submissions to me and to respond to the submissions of the other party.

Service of the tenant’s application and notice of hearing was not at issue.

The landlord had not submitted any documentary evidence. In response to my question about this he said that he had been out of town for the last few weeks attending to parents with medical issues and that he was still out of town and asked for an adjournment so that he could submit evidence. However, there was no evidence in support of the required travel or hospitalization either and the landlord acknowledged that he had been in receipt of the tenant’s materials since approximately mid-March. It was therefore clear that the landlord had been aware of the application for many weeks before he was required to leave town. I did not grant an adjournment for this reason and because the landlord had not submitted any evidence in support of the fact that he was required to be out of town.

Issue(s) to be Decided

Is the tenant entitled to the return of March rent?

Is the tenant entitled to recover the security deposit?

Background and Evidence

The building involved is a motel. There was no tenancy agreement in evidence. The tenant submitted a shelter information form. The tenant and the landlord agreed that the tenant had filled the form out with the assistance of motel staff.

The shelter information form indicates that the transaction includes “room and board” but it was also agreed between the parties that the tenant was occupying a self-contained unit with a kitchenette. The shelter information form indicates \$500.00 as the “amount per month,” that a security deposit of \$200.00 was paid, and that utilities are “included in the rent.”

The tenant testified that she moved into the unit in question on January 2, 2017 and that on January social assistance gave her \$700.00, which she deposited into her bank account and then used to pay the landlord \$500.00 for January's rent and \$200.00 as the security deposit. She said that she had documentation establishing that she paid the landlord these amounts but has not submitted it. She also said that the motel did not provide her with a receipt.

The tenant also testified that on or about January 11, 2017 she filled out paperwork so that social assistance would pay \$500.00 for February rent directly to the motel, and that it did so.

The tenant said that on or about February 18 another \$500.00 went directly from social assistance to the motel on her behalf for March rent. At the hearing the tenant testified that she was evicted on February 25 for not having paid February rent. She also testified that the tenancy ended February 24, 2017. However, in written submissions the tenant stated that she received a phone call on March 3 telling her she had to move out and that the reason given was that rent was "apparently biweekly."

The tenant seeks recovery of the \$500.00 paid on her behalf for March and return of the damage deposit.

Also during the hearing the tenant said that she understood that social assistance was paying her portion of the rent, and that another co-tenant was or would be paying an additional amount. The tenant stated that she had not yet provided the landlord with her forwarding address in writing.

The landlord says that the tenant only began occupying the unit on February 1, 2017, and that the motel is strictly pre-pay, meaning she would not have been allowed to occupy the unit without paying in advance. The landlord agrees that his office helped the tenant fill out the shelter information form, but says that it is not a tenancy agreement, and that the actual terms of the agreement were different. He says that the tenant was advised that the unit could be rented on a daily, weekly, or monthly basis, and that the monthly cost was \$1000.00. The tenant told the office that she was entitled to \$500.00 monthly from social assistance and the office told her that \$500.00 would cover only two weeks (until February 15, 2017).

The landlord says that the tenant then said that she would arrange for a roommate. However, she was not able to do so. The landlord told her that she had to leave after February 15, but she asked that she be allowed to remain and assured the office that she would pay the balance owing for February with her March social assistance installment, which she did.

The landlord further testified that the tenant was advised on March 3 that March rent was outstanding. She responded that she would figure something out, but she vacated without notice and without checking out on March 7, 2017.

Analysis

Claim for return of March rent

The tenant's testimony was somewhat confusing and the tenant did not seem to be able to remember the certain important dates. The tenant did not say that she advised the landlord she was vacating the rental unit and I find that the tenant left the rental unit without notice on March 7, 2017. This date is consistent with the landlord's account of events and with the tenant's written submissions.

I do not need to decide whether the tenancy agreement was \$500.00 monthly for the tenant alone (as indicated in the shelter form) or \$1000.00 monthly for two tenants (as per the landlord's and some of the tenant's testimony). Regardless of whether rent was paid in full or in part for March, the tenant is not entitled to a refund for the March rent that was paid because she occupied the unit after March 1, 2017.

If the tenant believed that by paying \$500.00 in March she was paying the amount owing for March in full, then she could have disagreed with the landlord's attempt to end the tenancy and insisted on her right to stay in the unit until the end of the month. If the tenant understood that monthly rent was actually \$1,000.00, then she should understand that rent was not paid in full for March. In neither case is she entitled to a refund of any amount paid for March.

Claim for return of security deposit

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

This tenant acknowledged that she has not given the landlord her forwarding address in writing. This means that even if the tenant did pay the landlord a security deposit (which issue I do not decide), her application for its return is premature.

I therefore dismiss the tenant's application for return of the security deposit with leave to reapply. The tenant may make another application for return of the security deposit after 15 days from the late she provides the landlord with her forwarding address in writing. The tenant has been cautioned that she will need to establish that the security deposit was paid and that she provided her forwarding address in writing. She will also need to resubmit any evidence from this hearing upon which she may wish to rely.

Conclusion

The tenant's application for compensation under the Act, regulation, or tenancy agreement is dismissed.

The tenant's application for return of the security deposit is dismissed with leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: May 31, 2017

Residential Tenancy Branch