



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application for a monetary order for compensation for loss, double the return of the security deposit and recovery of the filing fee for this application. Both parties participated in the hearing and each gave affirmed testimony.

Issue to be Decided

- Whether the tenant is entitled to a monetary order under the *Act*

Background and Evidence

Pursuant to a written residential tenancy agreement, the term of tenancy was from November 10, 2007 to November 30, 2008. Thereafter, according to the agreement, tenancy was to continue on a month-to-month basis. The agreement shows that rent of \$2,200.00 is payable each month. However, the parties testified that this amount was comprised of rent in the amount of \$1,950.00 plus the estimated cost in advance of monthly utilities in the amount of \$250.00. The parties agree that a security deposit of \$975.00 was collected on November 4, 2007.

There was no move-in condition inspection undertaken or report completed. It is not clear whether a move-out condition inspection was undertaken, however, in any event there is no evidence of a move-out condition inspection report.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated October 1, 2008. The parties agree that the tenant moved out of the unit on or about November 30, 2008 which is the date shown on the notice by when the tenant must

vacate the unit. A copy of the notice was submitted into evidence. The reason shown on the notice for its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

In addition to recovery of the filing fee, the tenant seeks double the return of her security deposit, compensation for an alleged overpayment of utilities, compensation for repair to a car tire required allegedly as a result of nails left in the driveway, and compensation for restricted access to a garage said to be included in the rent.

During the hearing the landlord confirmed that he had not repaid the tenant's security deposit. The landlord claimed that he faced considerable expense to repair water damage to the unit as a result of the tenant's manner of using water to clean the floor in the unit. The landlord said his intention is that his daughter will move into the unit following completion of the repairs. The landlord's witness testified as to the existence of water damage in the unit and stated his view which is that this was at least in part the result of the tenant's actions.

The landlord also confirmed that he had not applied for dispute resolution in order to claim against the security deposit. Further, the landlord acknowledged that he had not compensated the tenant in an amount equal to one month's rent as required by the *Act* in circumstances where a 2 month notice to end tenancy is issued.

During the hearing the parties engaged in a lengthy conversation and compared calculations in regard to monies owed for utilities.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property. The tenant vacated the unit in accordance with the 2 month notice. Related to this notice, section 51 of the *Act* addresses **Tenant's compensation: section 49 notice**. In part, this section of the *Act* provides as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As the landlord has not compensated the tenant in compliance with the above statutory provisions, I find the tenant is entitled to one month's rent in the amount of \$1,950.00.

As to return of the security deposit, section 38(1) of the *Act* provides 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.

While tenancy ended on or about November 30, 2008, into evidence the tenant submitted a copy of her letter to the landlord dated December 16, 2008 in which, in addition to other things, she informs the landlord of her forwarding address. In her letter the tenant also refers to the forwarding address having been earlier provided in writing by letter dated December 2, 2008.

Section 38(6) of the *Act* states as follows:

38(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.

Pursuant to all of the above information, as the landlord has not complied with section 38(1) of the *Act*, I find the tenant has established entitlement to double the return of her security deposit in the amount of \$1,950.00 (\$975.00 x 2) in addition to interest calculated on the original amount of the security deposit of \$16.98.

Pursuant to section 63 of the *Act*, during the hearing the parties settled on an amount of \$253.09 in payment from the landlord to the tenant as settlement of all aspects of the dispute related to the cost of utilities.

As to the tenant's claim for compensation for repair to her car tire and compensation associated with restricted access to a garage, I find there is insufficient evidence before me to support either claim. Accordingly, I dismiss these aspects of the tenant's claim.

In summary, I find the tenant has established entitlement to a monetary order in the amount of \$4,220.07. This is comprised of one month's rent in association with the landlord's issuance of the 2 month notice to end tenancy (\$1,950.00), double the return of the security deposit plus interest (\$1,966.98), settlement of the dispute around utilities (\$253.09), and recovery of the filing fee (\$50.00). I therefore order the landlord to pay to the tenant the amount of \$4,220.07 and I grant the tenant a monetary order under section 67 of the *Act* for \$4,220.07.

Conclusion

I hereby grant the tenant a monetary order under section 67 of the *Act* for **\$4,220.07**. This order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: March 4, 2009

Dispute Resolution Officer