Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for double recovery of the security deposit, and compensation for damage or loss under the *Residential Tenancy Act*, the regulations or the tenancy agreement. Despite having been served the notice of hearing and application for dispute resolution by registered mail on November 10, 2009, which was deemed to be served under the *Act* upon the landlord on November 15, 2009, the landlord did not attend the hearing.

Issues(s) to be Decided

Is the tenant entitled to double the return of the security deposit?
Is the tenant entitled to compensation for damage or loss under the *Residential Tenancy Act,* the regulations or the tenancy agreement?

Background and Evidence

The tenancy began on September 1, 2007 without a written tenancy agreement. The tenant paid a security deposit of $275.00 on September 1, 2007. The tenancy ended on August 31, 2009. The tenant provided the landlord with her written forwarding address on September 22, 2009. The landlord has not returned the security deposit or applied for dispute resolution.

The tenant is claiming $5,000.00 in damages for:

- Pain and suffering due to abusive behavior by the landlord and family,
- Contending with rats and mice,
- Contending with uneven sidewalks and obstacles on the sidewalk at the access point of the unit, and
- Abusive behavior by the landlord and his family towards guests of the tenant.

The tenant testified that the landlord and his family were verbally abusive toward her and her guests on several occasions. She testified that when she was moving out, the landlord's son threatened to bodily remove her, and the rest of her belongings would be out on the street if she had not vacated within the hour.

She also testified that rats and mice had been in her residence, apparently coming from the garage that had a man-door to the residence. The garage and the rented suite were on the ground level of the building.

Her application also includes a claim for having to maneuver around bags of manure for the landlord's perennial plant business. She stated that a truckload of manure would be dumped into the yard and the landlord would shovel it into large bags for his business. Until it was all in bags, the smell was offensive, and once it was in bags, they were on the sidewalk that she had to use to access her unit.

She also claims damages for uneven sidewalks, snow drifts and water hoses across the sidewalk.

The tenant also testified that she contacted the landlord about mold under the rug and linoleum when she moved into the unit, and his response was that it wasn't mold.

The tenant states that at the beginning of the tenancy, she was promised a parking spot in the driveway in front of the residence, but the landlord refused her access after the

first year of the tenancy. She then parked on the street, but was sometimes required to park some distance away from the residence because no closer space was available.

Analysis

Section 38 of the *Residential Tenancy Act* requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. I find that the tenancy ended on August 31, 2009, and that the tenant provided her forwarding address in writing, which is deemed to have been delivered to the landlord on September 27, 2009. I further find that the tenant is entitled to the return of the security deposit in the amount of $275.00 and landlord has failed to repay it or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

With respect to a claim for compensation for damage under the *Act,* regulation or tenancy agreement, the *Residential Tenancy Act* states that:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In the circumstances, I cannot find that the landlord had an obligation to install a motion light or remove snow or ice. As for the other claims, I must apply the 4 part test for damages:

1. What the damage or loss is;

2. That the damage or loss resulted from a breach of the *Act*, the regulations or the tenancy agreement;
3. What the damage or loss is worth;
4. What actions the tenant took to mitigate the damages.

The tenant has described what damage or loss she is claiming but was not able to attach a dollar amount to any of her claims. She did mention the mold to the landlord at the beginning of the tenancy, but stayed in the unit for 2 more years without raising the issue again or putting it in writing.

The *Residential Tenancy Act* states:

> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
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> (a) reasonable privacy;
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> (b) freedom from unreasonable disturbance;
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> *(c)* exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted];*
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In considering this application, the Residential Tenancy Policy Guideline of the Right to Quiet Enjoyment indicates that: "Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable."

I find that the tenant's claims of verbal abuse, threatening and swearing at a tenant would constitute significant interference and loss of quiet enjoyment under Section 28 of the *Act,* if it continued, and should be expected to result in a tenant leaving a rental unit.

I find that the tenant has proven that significant interference of the tenancy occurred on at least 5 occasions, in violation of Section 28 of the *Act* and I find that the tenancy was therefore devalued by 10% during the entire tenancy.

The loss of the parking spot that was promised to the tenant and then removed after the first year of tenancy has not resulted in any financial loss to the tenant, but I find that she was entitled to it. I find that the change in the facilities or services as alleged by the tenant would not be permitted unless the landlord complied with Section 27(2) of the *Act,* which states as follows:

> **27** (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
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> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
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> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In this instance, I find that parking was included as part of the tenancy and that the landlord improperly terminated this service without compensating the tenant for the value as required under the *Act.*

Conclusion

I find that the tenant has established a claim for the security deposit of $275.00, accrued interest of $5.53, and double the base amount of the security deposit in the amount of $550.00, for a total of $555.53. The tenant is also entitled to recover the $100.00 filing fee for this application. The cost of sending registered mail to the landlord for service relating to this hearing is not recoverable under the *Act.*

With respect to damage or loss of quiet enjoyment, I find that the tenant was severely intimidated by the landlord and his family members, and was not able to mitigate the

damages. For that reason, I find that the tenant is entitled to receive from the landlord, the amount of $1,320.00.

Because the tenant did not reduce her concerns to writing with respect to mould in the unit, I cannot find that she did anything to mitigate the issue, or pursue it in any way. Therefore, I make no award to the tenant for mould.

I find that the tenant is entitled to a rent abatement in the amount of $20.00 for the months of September 1, 2008 to August 31, 2009, for a total monetary entitlement of $240.00 for the loss of parking.

I hereby find that the tenant is entitled to recover from the landlord the following amounts:

Double Security Deposit and Interest	$555.53
Damages	$1,320.00
Rent Abatement for Loss of Parking	$240.00
Recover Filing Fee	$100.00
TOTAL	**$2,215.53**

This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 16, 2010.

Dispute Resolution Officer