

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant seeking a Monetary Order for damage or loss under the *Act* and recovery of the filing fee for this proceeding. On hearing the tenant's evidence, it became apparent that she intended to seek return of her security deposit in double as well, and I have exercised my discretion under section 64(3)(c) of the *Act* to amend the application accordingly. The tenant also seeks to recover the filing fee for this proceeding from the landlord.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for loss or damages under the *Act* or rental agreement, return of her security deposit in double and recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy began on September 18, 2009 and ended on October 30, 2009 pursuant to a Notice to End Tenancy for landlord use served on October 2, 2009. Rent was \$550 per month and the landlord holds a security deposit of \$275.

During the hearing, the tenant gave evidence that on September 29, 2009, she was alarmed to note that another tenant was moving into another suite in the basement of

the rental building. She stated that she had been assured that her suite was fully conforming, but believed it was not because of the second suite. She called the local bylaw enforcement office, and an officer attended and confirmed that the suite was non-conforming, and ordered the landlord to bring the rental building into conformity.

In consequence, the landlord issued the tenant with a notice to end tenancy for landlord use, a copy of which was not among the submitted evidence. She vacated on October 30, 2009, but did not give notice according to the landlord, and she did not return the key until November 30, 2009, although the tenant claims to have put it through the door when she left.

The tenant stated that the landlord entered her suite without notice or invitation on October 1, 2009, resulting in a police call by the tenant. The landlord stated that she had needed passage through the suite to access a service panel for the other suite.

The tenant alleged that the landlord had misrepresented the suite as being fully conforming, but the landlord stated she was unaware of any such issue since owning the property over the past five years until the bylaw enforcement officer's attendance.

The parties concur that the security deposit had not been returned, but disagree as to whether the landlord had been provided with a forwarding address. The tenant stated she had passed it to a police officer who passed it to the landlord on October 1, 2009, but the landlord stated that was not the case.

In addition to the security deposit, the tenant also seeks moving expenses but provided no receipt and advised that she moved with the assistance of friends.

Analysis

Section 38 of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address, the landlord must return the deposit to the tenant or make application for dispute resolution to claim upon it.

In this matter, the landlord has not made application, but I am not persuaded that the tenant provided the forwarding address as claimed. When asked to provide the address during the hearing in order to fully establish that it was in the landlord's hands from the time of the hearing, the tenant at first refused.

In addition, the copy of the handwritten forwarding address submitted at the hearing was dated January 25, 2010, "01-25-10." Therefore, in the absence of any corroborating evidence, I must find that the landlord did not have a forwarding address.

However, I do find that the landlord was given and recorded a forwarding address at the hearing and order that she now has until February 20, 2010 to return the deposit or be subject to an Order to return in double under section 38(6) of the *Act*.

I find that the period of free rent provided by section 51 of the *Act* is intended, among other reasons, to assist tenants who receive notice for landlord use with moving expenses. Therefore, the tenant's claim for moving expenses is dismissed.

Having found the claim for moving expenses and return of the security deposit in double have not succeeded, I decline to award the tenant's filing fee.

Conclusion

The landlord is deemed to be in receipt of a forwarding address for return of security deposit and must return it within 15 days or be subject to the provisions of 38(6) of the *Act* under which the tenant could make application for its return in double.

February 4, 2010