

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with cross applications. The tenant applied for return of double the security deposit, compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee. The landlord applied for compensation for damage to the rental unit, unpaid rent, damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee.

The tenant appeared at the hearing and confirmed she had been served with the landlord's application. Since the landlord did not appear at the hearing and the tenant was prepared to respond to the landlord's application, I dismissed the landlord's application without leave to reapply. Accordingly, the remainder of this decision pertains to the tenant's application only.

The tenant testified that she served the landlord with notification of the tenant's application and this hearing by registered mail and provided a receipt as evidence of service. I was satisfied the landlord was sufficiently served with the tenant's application and proceeded to hear from the tenant without the landlord present. Included in the landlord's evidence is a response to the tenant's claims. Since the tenant confirmed receiving the landlord's evidence, I have considered the written statements made by the landlord in reaching this decision.

Issues(s) to be Decided

1. Has the tenant established an entitlement to return of double the security deposit?
2. Has the tenant established an entitlement to compensation for damage or loss under the Act, regulation or tenancy agreement?
3. Award of the filing fee.

Background and Evidence

The tenant testified as follows. The month-to-month tenancy commenced May 1, 2009. Under the tenancy agreement the tenant was required to pay rent of \$2,000.00 on the 1st day of the month; however, pursuant to a previous dispute resolution decision (file no. 736294) the monthly rent was reduced to \$1,800.00 starting August 1, 2009 and the security deposit reduced to \$900.00. The decision for file no. 736294 was issued on July 13, 2009 and on July 31, 2009 the landlord issued the tenant a Notice to End Tenancy for landlord's use of property effective October 1, 2009. The Notice indicates the landlord has sold the property and the purchaser intends to occupy the rental unit; however, the landlord had verbally told the tenant the landlord intended to occupy the rental unit. The tenant paid rent for August 2009 but not September 2009. On August 31, 2009 the tenant sent a notice to end tenancy to the landlord via registered mail to advise the landlord that the tenant would be ending the tenancy effective September 15, 2009. The tenant provided a tracking number as evidence of the registered mail and the Canada Post website indicates the landlord received the registered mail on September 3, 2009.

The tenant testified that on September 3, 2009 she was served with a 10 Day Notice to End Tenancy for Unpaid Rent dated September 1, 2009. Also on September 3, 2009 the landlord was to conduct a property inspection; however, the landlord arrived at the property, looked in the tenant's windows, began shaking the tenant's doors and changed locks at the rear of the house. The tenant claimed she felt very harassed and her children were scared to remain in the rental unit. In response to the landlord's behaviour, the tenant moved out of the rental unit on September 4, 2009 instead of the

scheduled move date of September 15, 2009. The early move resulted in the tenant paying movers instead of having her husband perform the move. The tenant explained that she stayed with friends while storing the family's possession at the tenant's husband's place of employment. The tenant submitted a copy of the moving invoice as evidence.

On September 5, 2009 the tenant returned to the property to retrieve a few belongings left behind at the rental unit and clean. Upon arriving at the rental unit the tenant discovered the locks changed. The tenant called a locksmith who was able to open the locks and let the tenant in. While in the rental unit, the tenant noticed the landlord had begun moving the landlord's possessions into the garage and the rental unit window was broken. The tenant submitted an invoice for the locksmith and photographs as evidence.

On September 8, 2009 the tenant delivered her forwarding address to the landlord in writing by depositing a letter in the mailbox of the rental unit. The tenant provided a copy of the September 8, 2009 letter including the signature of an individual who witnessed it being delivered.

In addition to the claim for the moving costs and locksmith costs, the tenant is seeking recovery of the costs to provide photographs for this hearing and \$20,000.00 for loss of quiet enjoyment.

With respect to the tenant's claim for loss of quiet enjoyment, the tenant described how she felt forced out of the rental unit and the landlord scared the tenant and the tenant's children by unannounced visits and confrontations by the landlord and three visits from the police looking for the landlord or family members of the landlord. The tenant testified that after succeeding in obtaining a Monetary Order against the landlord in July 2009 the landlord's behaviour worsened.

In the landlord's written submission, the landlord states:

- The tenant did not give 1 month notice to end tenancy;
- The landlord did not receive a notice to end tenancy from the tenant in August 2009;
- The landlord was advised by Shaw cable on August 10, 2009 that the tenant's cable service had been disconnected at the rental unit and transferred to her new address;
- The landlord had posted a 10 Day Notice on September 1, 2009 and a Notice of Inspection on September 2, 2009;
- On September 3, 2009 the tenant did not answer the door and the tenant had changed the locks inhibiting the landlord from entering; however, the landlord did enter and discovered the unit abandoned;
- The tenant tried breaking into the property September 4, 2009 and vandalize the property;
- The tenant should not have returned September 5, 2009 with a locksmith as the tenant had already abandoned the rental unit and the landlord changed the locks;
- The landlord denied bothering the tenant or the tenant's family and that the tenant's application is a scam for money;
- The date on the moving truck invoice has been altered and the moving company is owned by family members of the tenant; and,
- The tenant damaged the property and is not entitled to return of the security deposit.

Upon further enquiry, the tenant acknowledged the moving company is owned by her family member but denied the invoice was altered. The tenant also denied vacating the rental unit before September 4, 2009.

Analysis

Section 51 of the Act sets out that a tenant who receives a Notice to End Tenancy for landlord's use is entitled to compensation equivalent to one month's rent. The compensation may be in the form of one of the following:

- 1) financial restitution, where the landlord pays the tenant the equivalent of one month's rent on or before the effective date of the two month notice,
- 2) occupancy, where the tenant withholds the last month's rent and occupies the rental unit rent-free for that last month, or
- 3) a combination of both.

Section 50 of the Act provides that a tenant who has received a Notice to End Tenancy for landlord's use may end the tenancy early by giving the landlord a written 10 day notice to end the tenancy. The tenant's 10 day notice must have an effective date that is at least 10 days after the landlord receives the tenant's notice.

Where the tenant gives a written 10 day notice to vacate and has not paid rent for the month for which the tenant's notice takes effect then the tenant may be compensated by a combination of rent-free occupancy up to the effective date of the tenant's notice and financial restitution for the remaining days of the month.

The tenant submitted that on August 31, 2009 the tenant mailed a notice to end the tenancy effective September 15, 2009. I accept that the landlord received the tenant's notice on September 3, 2009. Therefore, the tenant was permitted to end the tenancy effective September 15, 2009.

In light of the provisions of section 50 and 51, and the evidence provided to me, I find the tenant was entitled to use and occupancy of the rental unit rent-free up until September 15, 2009 and to receive financial compensation from the landlord for the second half of September 2009. Under section 51, the tenant is entitled a monetary award of \$900.00.

The tenant also claims that she was forced to vacate earlier than September 15, 2009 due to actions of the landlord. The landlord acknowledged changing the locks on September 3, 2009 thus I find the landlord did act in such a way as to prohibit the tenant from using the rental unit until the effective day of the tenant's notice. Although the landlord claims the tenant had abandoned the rental unit by September 3, 2009 the landlord has the burden to establish the tenant had abandoned the unit and I did not find the disputed evidence to be sufficient to establish abandonment. Therefore, I find the landlord violated the Act by changing the locks and precluding the tenant from accessing the rental unit during the remainder of the tenancy. I find the tenant entitled to compensation from September 3 – 15, 2009 which I calculate to be \$780.00 for this time period [$\$1,800.00 \times 13/30$ days].

As the landlord changed the locks and did not establish the tenant had abandoned the rental unit when the locks were changed by the landlord, I award the tenant \$72.70 for paying a locksmith to gain access to the rental unit in order to retrieve the rest of her belongings.

I did not find evidence that the tenant otherwise extinguished her right to return of the security deposit; therefore, section 38(1) of the Act applies. Section 38(1) requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

Based upon the evidence before me and in the absence of evidence to the contrary, I accept that the tenant provided a forwarding address to the landlord in writing by depositing a letter in the mail box at the rental unit. The tenant stated that the landlord moved into the rental unit and I also note that the address used by landlord on the landlord's application is also that of the rental unit. Therefore, I am satisfied the tenant served the landlord with her forwarding address at an address of residence of the landlord.

The landlord did not apply to retain the tenant's security deposit until making an application on March 23, 2010 which is more than 15 days after the receiving the tenant's forwarding address and more than 15 days after the tenant served the landlord with the tenant's application for return of the security deposit. Therefore, I find the landlord had the tenant's forwarding address in writing for more than 15 days before applying to retain it and the landlord violated section 38(1) of the Act.

Where section 38(1) of the Act is violated by a landlord, the Act requires the landlord to pay the tenant double the amount of the security deposit under section 38(6) of the Act. Therefore, I find the tenant is entitled to return of double the security deposit. I award the tenant \$1,800.00 for return of double the security deposit.

Based on the balance of probabilities, I accept that the tenant moved on September 4, 2009 due to concerns about the landlord's aggressive behaviour. I award the moving costs to the tenant. However, I have already awarded a rent abatement for September 3 – 15, 2009 in this decision and do not find the tenant entitled to other compensation for this same time period.

As the tenant was successful in establishing an entitlement to return of the security deposit, compensation under section 51, a rent abatement and moving costs, I award the tenant \$50.00 towards the filing fee paid by the tenant. I did not find the tenant established an entitlement to compensation greater than \$5,000.00 therefore I do not award the tenant the entire \$100.00 paid for the filing fee. I do not award the cost of photographs as the cost to prepare for a dispute resolution hearing is not recoverable under the Act.

The tenant is provided a Monetary Order calculated as follows:

Double security deposit ($\$900.00 \times 2$)

\$ 1,800.00

Loss of use of rental unit Sept 3 – 15, 2009	780.00
Section 51 compensation for landlord's use of property	900.00
Locksmith	72.70
Moving costs	247.50
Filing fee	<u>50.00</u>
Monetary Order for tenant	\$ 3,850.20

The tenant must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord's application was dismissed without leave to reapply. The tenant was partially successful in the tenant's application and has been provided a Monetary Order in the amount of \$3,850.20 to serve upon the landlord.

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: April 09, 2010.

Dispute Resolution Officer