

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary compensation under the Act or tenancy agreement and the return of double her security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

The Tenant moved into the rental unit on or about January 25, 2008. She paid a pro-rated amount of rent for January of 2008, and a security deposit in the amount of \$250.00. The monthly rent for the rental unit was established as \$525.00, of which the Landlord charges \$500.00 for rent and \$25.00 for cleaning supplies. The parties did not enter into a written tenancy agreement. There was no incoming condition inspection report performed by the Landlord. The rental unit is a room in a property which has apparently has several other occupants in other rooms as well.

The Tenant alleges the Landlord evicted her on or about February 11, 2008, without any Notice. She alleges she was thrown out of the rental unit by the Landlord. She further alleges that at the time she was being thrown out, an unidentified Agent for the Landlord attempted to physically force her to return the key to the rental unit, by grabbing at the key, which was hanging on a necklace around her neck.

According to the Tenant's testimony, the Landlord called the police. She is not sure what the Landlord told the police, however, when they arrived at the rental unit they insisted that the Tenant leave the rental unit. The Tenant was concerned about her

personal property, which she alleges the Landlord had placed in garbage bags at the front of the rental property. She testified that the Landlord told her to return the next day and take her property then.

The Tenant alleges that when she returned the next day, the Landlord returned \$80.00 of her security deposit to her. She could not remove all of her property at that time and she stated the Landlord told her she could have all her security deposit back when she removed the rest of her personal property. The Tenant alleges she had approximately 18 bags of belongs in the rental unit, and she has provided an itemized list in evidence.

The Tenant is claiming for \$500.00 as double her security deposit and \$1,355.00 for the depreciated value of her personal property. I note the Tenant filed her claim on December 14, 2009, which is within the limitation period for such an Application.

The Landlord testified that he rents out rooms at the property containing the subject rental unit as transient accommodation. He testified that he has a clause in his tenancy agreement which permits him to immediately evict any renter caught with drugs on the property, although he admits he did not have such a tenancy agreement with this Tenant.

The Landlord testified that on the morning of February 11, 2008, he received a call from one of other occupants at the rental unit who informed him there was blood in the wash room of the property. The Landlord then testified he went to the property and inspected each of the rental units in the property, including the Tenant's room. He testified the Tenant's rental unit room was neat and tidy with the bed made, however, he saw needles and drugs on the Tenant's bed. He alleges he then called the Tenant's social worker and informed the social worker the Tenant would be immediately evicted. The Landlord testified he then packed up the Tenant's belongings, which he says was two back packs or two bags and moved them out for her to pick up.

The Landlord denies he gave the Tenant back \$80.00 of her security deposit, as he said he would have a record of this. He testified he kept the security deposit for rent for February of 2008. He testified he had done an inventory of the Tenant's personal property, but he did not submit this list in evidence. He further testified he kept the personal property for seven months and then disposed of it.

In reply the Tenant testified that the Landlord must be confusing her with some other renter, as she insists he returned \$80.00 of the security deposit back to her. She recalled using a portion of these funds to pay for the cab to help her take some of her

property away. She also testified that the social worker the Landlord named as the person he contacted was not her social worker.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlord has breached the Act and has caused the Tenant to suffer losses due to these breaches.

The Landlord could only evict the Tenant by following the provisions of the Act. The Landlord did not follow the Act and did not give the Tenant a valid Notice to End tenancy. Even if the parties had signed a tenancy agreement containing an immediate eviction clause it would not be valid, as section 5 of the Act prohibits the parties from avoiding or contracting outside of the Act.

I find the Landlord breached section 29 of the Act by failing to give the Tenant the required 24 hour Notice he was entering her rental unit.

I find the Landlord had insufficient evidence to prove he dealt with the Tenant's personal property in accordance with the Act and regulation.

I find there was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest. There was also no evidence to show that the Landlord had applied for arbitration to retain a portion of the security deposit, plus interest. I find the Landlord has breached section 38 of the Act. I find that the Landlord is not entitled to retain any portion of the security deposit or interest and must return double the security deposit, plus the applicable interest to the Tenant.

I accept the evidence of the Tenant with regard to her list of personal property which was improperly disposed of by the Landlord, although I have reduced this by \$50.00 as she claimed that amount for things she may have forgotten. I find it inappropriate to award monetary funds for unknown items. Therefore, I award her \$1,305.00 for loss of personal property due to the Landlord.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$2,333.50**, comprised of double the security deposit (2 x \$250.00), the interest on the original amount held (\$3.50), loss of personal property \$1,305.00, and the return of \$525.00 for February 2008 rent.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies. I have enclosed a copy of a guidebook for the Landlord to refer to for his rights and obligations.

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: May 12, 2010.

Dispute Resolution Officer