



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant, requesting monetary orders for return of the security deposit and loss of quiet enjoyment of the rental unit.

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.

Issue(s) to be Decided

Has there been a breach of the Residential Tenancy Act by the Landlord?

Background and Evidence

The Tenant paid a security deposit of \$375.00 on April 1, 2007. At the end of the tenancy the rent was \$650.00 per month, as there had been a rent reduction during the course of the tenancy.

According to the testimony of the Tenant the Landlord wanted the Tenant to vacate the rental unit on December 31, 2009. She alleges she asked the Landlord several times for a valid Notice to End Tenancy. The Tenant alleges the Landlord threatened to remove the Tenant's personal property from the rental unit and sent her emails to this effect. The Tenant testified she felt threatened and it was safer to move out.

After the Tenant moved out she requested the Landlord return the security deposit to her, however, the Landlord told the Tenant she did not clean the unit and kept the deposit.

The Landlord testified that she and the Tenant were to move into a lake house together on January 1, 2010. The Tenant told her she was not going to move in with her.

The Landlord had entered into a new tenancy agreement for the subject rental unit with a different renter, who was to move in on January 1, 2010.

The Landlord testified she had shown the Tenant a Notice to End Tenancy dated December 1, 2009. The Tenant testified she did not receive a Notice to End Tenancy from the Landlord. The Landlord testified that she had given the Tenant the rest of the month to move out.

The Landlord did not submit any evidence for the hearing. The Landlord testified she now knows she should have paid more attention to the “legalities” of the situation.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached the Act and tenancy agreement.

The Landlord did not serve the Tenant a valid Notice to End Tenancy. The Landlord had no authority or right to end the tenancy unless she followed the Act. I find the Landlord has breached section 44 of the Act. I find the actions of the Landlord caused the Tenant to suffer a loss of quiet enjoyment of the rental unit, equivalent to half of one month rent.

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, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest. I further find that the Landlord had insufficient evidence to show the rental unit was not cleaned by the Tenant. Therefore, the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act. Here the Landlord did not have authority under the Act to keep any portion of the security deposit.

I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Conclusion

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies. The Landlord has breached the Act.

I find the breaches of the Landlord have caused the Tenant to suffer a loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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 **\$1,084.93**, comprised of \$325.00 for half a month of rent for loss of quiet enjoyment of the rental unit, \$750.00 for double the security deposit (2 x \$375.00), and the interest on the original amount held (\$9.93).

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.

Lastly, I have provided the Landlord with a copy of a guidebook to the Act for future reference.

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: June 17, 2010.

Dispute Resolution Officer