

DECISION

Dispute Codes: *MNDC, MNSD, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order to retain the security deposit in satisfaction of his claim and for the recovery of the filing fee. The tenant applied for the return of her security deposit, compensation and the filing fee.

The tenant applied for dispute resolution on March 26, 2010 and amended her application on May 17, 2010. In the initial application, the tenant had applied for compensation in the amount of \$401.96 and in the amended application she increased this amount to \$4,515.96.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order for the filing fee and to retain the security deposit? Is the tenant entitled to the return of the security deposit, compensation and the filing fee?

Background and Evidence

The tenancy started on February 01, 2010 and ended on April 30, 2010. The rent was \$1,190.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$595.00. The tenant did not give the landlord any notice to end the tenancy. The tenant stated that due to problems with the occupants of the lower rental unit, she feared for her safety and therefore decided to move out as soon as possible. The tenant stated that there were several incidents that involved police interaction with the tenants below and she was advised by a police officer to move out in the interest of her own safety and security.

The tenant stated that she found a suitable rental unit from an advertisement in the newspaper and after checking it out; she rented it effective May 01, 2010. The tenant

stated that she did not give the landlord any notice to end the tenancy because of the unsafe conditions and on the advice of a police officer.

The landlord has applied to retain the security deposit to cover the loss of income that resulted from the tenant moving out without adequate notice.

The tenant has applied for compensation in the amount of \$4,515.96. This includes the amount of \$401.96 owing from a previous dispute, return of rent for the three months of the tenancy in the amount of \$3,470.00, the cost of a permit for a moving truck \$49.00 and the return of the security deposit \$595.00.

At the start of the tenancy, the tenant encountered problems with a refrigerator and a stove that were inoperative. This resulted in extra expenses incurred by the tenant due to food spoilage and the inability to cook meals in the rental unit. The parties discussed the issue and the landlord offered the tenant \$100.00 off the rent for the following month. On March 01, 2010, the tenant wrote a cheque for rent for March with a \$100.00 deduction as per the agreement between the two parties. On March 04, 2010 the tenant wrote a letter to the landlord stating that she had incurred expenses of \$700.00. Even though this letter is dated March 04, 2010, after the tenant deducted \$100.00 off her rent to resolve this issue, the letter makes no mention of this deduction. This issue was not revisited until the tenant made application for dispute resolution.

The tenant stated that she spoke with a previous tenant who had been awarded compensation for this same problem. On March 26, 2010, the tenant applied for a monetary order in the amount of \$401.96. The tenant has filed copies of her credit card statements that include purchases from a grocery store and a coffee shop.

The tenant stated that the unit was dirty and that she encountered several problems with the occupants of the lower rental unit. The tenant stated that on one occasion the lower tenant banged on her front door with a baseball bat.

Police attended the premises on multiple occasions. The tenant stated that the landlord was aware of the problem with the lower tenant but failed to disclose it to the tenant.

Prior to the start of this tenancy, the landlord had taken action to evict the occupant of the lower suite, without success. The tenant made a verbal complaint against these occupants and the landlord requested her to put it in writing. On February 28, the tenant wrote a complaint about the lower occupant and the landlord issued warning letters to the lower occupants on March 01 and on March 05. On April 13, the tenant wrote another complaint against the lower occupants and the landlord served them a notice to end tenancy and applied for an order of possession. This matter was heard on June 07, 2010 and the landlord was successful in evicting the occupants of the lower rental unit.

Analysis

Landlord's application:

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenant took the time to look for a rental unit and check it out, but did not give the landlord any notice to end the tenancy until the day she moved out, thereby causing the landlord to suffer a loss of income for the month of May 2010. Accordingly, I find that the landlord is entitled to \$1,190.00.

However, since the landlord has only applied to retain the security deposit of \$595.00 in full satisfaction of his claim, I will allow the landlord's application to retain the security deposit in full and final settlement of his claim.

Since the landlord has proven his claim, he is also entitled to the recovery of the filing fee of \$50.00.

Tenant's application:

The tenant has claimed \$401.96 as compensation for the extra expense she incurred due to the broken appliances in the rental unit. Based on the tenant's testimony, I find

that she accepted the offer made by the landlord and deducted the agreed upon amount of \$100.00 from the rent for March. The tenant stated that she spoke to the previous tenant who had been awarded compensation for a similar problem and decided to make application for an additional amount.

I find that by accepting the landlord's offer, the matter has been dealt with and was settled at that time. Therefore, I find that the tenant is not entitled to an additional amount of \$401.96 for a claim that was already settled. Accordingly the tenant's claim for \$401.96 is dismissed.

The tenant stated that she spent the entire tenancy fearing for her safety due to the problems associated with continuous drug and alcohol abuse by the occupants of the lower suite and therefore was deprived of quiet enjoyment and entitled to the return of rent that she had paid for the entire time she rented the unit.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control. Frequent and ongoing interference, if preventable by the landlord and he stands idly by while others engage in such a conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

Section 6 of the *Residential Tenancy Policy Guideline*, states that a landlord would normally be held responsible for the action of other tenants, if he was aware of a problem and failed to take reasonable steps to correct it.

In this case, the landlord responded to the tenant's complaints by notifying the concerned parties with breach letters. The landlord also issued an eviction notice. The landlord stated that he did his best to evict the occupants of the lower suit and was finally successful on June 07, 2010. Therefore, I find that the landlord took reasonable steps to address the tenant's complaints.

Based on the documentary evidence and sworn testimony of both parties, I find that the landlord responded to the complaints in a timely manner and made efforts to minimize disruption to the tenant. Accordingly, I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment and is therefore not entitled to the return of rent for February, March and April and the cost of a permit for a moving truck. The tenant has not proven her case and therefore is not entitled to the filing fee.

However, I do find that the tenant did suffer a certain amount of angst and fear due to the activities of the tenant below. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly, I will award the tenant \$100.00 as a minimal award. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$50.00 which consists of a minimal award of \$100.00 minus the landlord’s entitlement of \$50.00.

Conclusion

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for the amount of **\$50.00**. 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: July 26, 2010.

Dispute Resolution Officer