



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNC, MNDC, MNSD

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for Cause and to apply for more time to cancel the Notice. At the outset of the hearing the tenant stated she has moved from the rental unit and therefore these sections of her application have been withdrawn. The tenant seeks a monetary order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and an Order for the return of her security and pet damage deposits.

Service of the hearing documents were done in accordance with section 89 of the *Act*, and were hand delivered/ to the landlord on September 15, 2010. The landlord confirmed receipt of the hearing documents

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

The landlord stated that the address given on the tenants' application is not her address. The tenant states it is her sisters' address and therefore was given to the landlord as her forwarding address. Neither party voiced any objections to the landlords' address being changed to her own address.



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Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the return of her security deposit?

Background and Evidence

Both Parties agree that this month to month tenancy started on May 15, 2010 and ended sometime towards the end of September, 2010. The monthly rent was \$750.00 per month and was due on the first of each month. The tenant paid a security deposit of \$375.00 and a pet deposit of \$375.00 on May 15, 2010.

The tenant testifies the landlords actions forced her to stay away from her home for five days as she kept screaming at her every time the smoke detector went off. The tenant states she asked the landlord in writing to change the detector or have it checked out but she refused to do so. The tenant claims she had to endure constant harassment from the landlord over the smoke detector which went off every time she cooked as it is overly sensitive.

The tenant states she had to call the Police when the landlord assaulted her. She claims the landlord hit her over the head with her camera when she came to post a Notice on the tenants' door. The tenant states the police were called on another occasion and were the ones who served the landlord with the tenants Notice of this hearing.

The tenant seeks to recover the sum of \$750.00 for harassment from the landlord throughout her tenancy. She claims the landlord kept accusing her of having people at her unit when they were just her family visiting. The tenant also states the landlord has entered her unit without permission and turned off the lights.

The landlord disputes the tenants' claims. She states there is nothing wrong with the smoke detector it is an expensive model that is hardwired in to the properties electrical system and has been checked. The landlord claims it is not overly sensitive but it goes off late at night because

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the tenant is smoking inside her unit. The landlord states she has not seen the tenant smoking inside but has smelt the smoke in her unit above. The landlord states the tenant avoids the landlord coming to investigate when the detector goes off as she telephones her to say everything is alright and she has opened the windows. On one occasion the landlord states the tenant had a large number of her family visiting for a meal. A member of the tenants' family tampered with the smoke detector and the landlord saw the wires hanging out. She spoke to this person about it and he admitted to having tampered with it.

The landlord states the tenant told her she was a light smoker but she is a heavy smoker and has many guests who also smoke. The landlord states she has had problems with the tenant trying to intimidate her and her nine year old daughter by swearing at her. The landlord states she has gone to the police herself to make a complaint about the tenant.

The landlord testifies that she did not assault the tenant but it was in fact the tenant who assaulted her. The landlord states she went to the tenants' door to give her a Notice for entry to the unit. She claims the tenant started screaming at her to get out. The landlord states she had her camera with her to take a picture of the Notice taped to the tenants' door. She claims the tenant lunged at her grabbed the Notice and tore it off the door. The landlord states the tenant throws her to the ground and grabbed at her bra twisting the wire. The landlord then sat on a chair and the tenant tried to flip the chair out from under her. While the landlord attempted to take a photograph the tenant smashed her camera. The tenants' friend who was present called the Police.

The landlord denies entering the tenants unit to turn any lights off. She claims the only time she entered was to close the door after the tenant had moved out and had left the door open and the keys on the counter.

The tenant seeks to recover her security deposit and pet damage deposit from the landlord. The tenant agrees she has not given the landlord her forwarding address in writing but states the address on her application under the section for the landlords address is her forwarding address.



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Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution.

The tenant argues that she has given the landlord her forwarding address on the application. However, the address given on the application for the tenant is the dispute address and the other address was given wrongly as the landlords address. The landlord would have no way of knowing that this address was the tenants' forwarding address and I will not accept that she has given the landlord her forwarding address in writing as specified under section 38 of the *Act*. Therefore, the tenant is not entitled to recover her security deposit or pet deposit at this time and must provide the landlord with her forwarding address as stated under section 38(1) of the *Act*. Consequently, this section of the tenants' application is dismissed with leave to reapply.

With regards to the tenants application for compensation from the landlord; In this matter the burden of proof lies with the applicant to show beyond a reasonable doubt that the landlord has breached the covenant of quiet enjoyment by harassing the tenant about her smoke detector. However, in this case it is just the applicants' word against that of the respondent and when it is just one persons word against that of the other that burden of proof is not met. Consequently the tenants claim for \$750.00 in compensation is dismissed.

Conclusion

The tenant's application for the return of her security deposit is dismissed with leave to reapply in the event the landlord does not return her security deposit or file an application to keep it within 15 days of receiving the tenants forwarding address in writing.



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The tenants claim for money owed or compensation for damage or loss is dismissed without leave to reapply.

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: October 21, 2010.

Dispute Resolution Officer