



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for the return of all or part of her security deposit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord. I find the Landlord was served notice of this hearing in accordance with the *Residential Tenancy Act*.

The Tenant appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one appeared on behalf to the Landlord despite her being served notice of today's hearing in accordance with the Act.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain monetary compensation as a result of that breach?

Background and Evidence

The Tenant testified she entered into a verbal tenancy agreement that began on December 22, 2010. Rent was payable in the amount of \$750.00 and on December 22, 2010 she paid the Landlord \$350.00 as the security deposit. There were no move in nor move out inspection reports completed. The rental unit consisted of a bedroom with a shared living room and kitchen.

The Tenant stated that on January 21, 2011 she was insulted and disrespected by a new male tenant. She told the Landlord that she would need to relocate as a result and the Landlord informed her that she would need to give one month's notice. So she made up her mind that she would have to stay another month. Then on February 7, 2011 the Landlord informed her that she had found another person to take over the Landlord's room and wanted the Tenant to move out that day so the Landlord could move her possessions out of the hall and into the Tenant's room.

The Tenant and Landlord agreed that the Tenant could stay until the next day, February 8, 2011 and that the Landlord would refund the Tenant the balance of February's rent and her full security deposit. The Tenant found a friend to assist her move out on February 8, 2011 into a place that she had saw a few days earlier which was still available. The Landlord assisted the Tenant in loading up her possessions.

On February 9, 2011 the Tenant attempted to return the keys and a letter with her forwarding address and request for the return of the balance of her February rent and her security deposit. The Landlord refused to accept the letter but she did accept the keys. The Tenant contacted the owner of the apartment and was instructed to leave the letter at the reception/security office and they would deliver it to the Landlord.

On February 22, 2011 she received a text message to meet with the Landlord. When she arrived someone else was there with an envelope for her which contained a cheque from the Landlord in the amount of \$350.00, the return of her security deposit. The

Landlord had listed a new unit number for her address on the cheque. The Tenant suspects the Landlord moved into the new unit with her friend. The Tenant is seeking the return of the twenty days of rent for February 2011 that she had prepaid in the amount of \$536.00.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her documentary evidence which included, among other things, copies of emails, a written statement from a witness, and the Tenant's typed statement.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Tenant provided the Landlord with notice to end the tenancy and was committed to staying until February 28, 2011. Then the Landlord summarily evicted the Tenant with one day's notice, having the Tenant vacate on February 8, 2011, in violation of section 55 of the *Residential Tenancy Act*.

In cases where rent is paid in advance of the month, for example rent for February is due on or before the 1st of February, if the tenancy were ended by the landlord's breach of the Act the landlord would be entitled to retain the rent paid up to the date the rental contract was ended and the tenant would be entitled to restitution or the return of the rent that was paid for the period after the tenancy was ended.

Based on the aforementioned I find the Tenant has met the burden of proof and is entitled to the return of rent paid in advance for the period of February 9, 2011 to February 28, 2011 in the amount of **\$493.20** (20 days x \$24.66 per day). The daily rate is calculated as \$750.00 x 12 months divided by 365 days.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$493.20**. This Order must be served upon the Landlord and may be filed in Provincial 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: June 13, 2011.

Residential Tenancy Branch