



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 the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; the landlord's agent and the landlord's witness.

During the course of the hearing a fire alarm was sounded in my office, I advised the parties to wait on the line until I returned or in the event that we were disconnected that the Residential Tenancy Branch (RTB) would contact the parties to re-schedule the hearing. I returned in approximately 10 minutes and we finished the hearing.

At the outset of the hearing, I noted the tenant had listed two separate dispute addresses. As an Application for Dispute Resolution can be filed only on one specific tenancy at a time that required we split this Application into two separate Applications, I offered the tenant the following options:

1. We could adjourn this hearing and have the tenant file a 2nd application, have the two files joined and reconvene at a future date;
2. We could hear the matter related to the first tenancy (the original rental unit) at this hearing, and the tenant remains at liberty to file a separate Application in relation to the second tenancy (the second rental unit); or
3. We could hear the matter related to the second tenancy (the second rental unit) at this hearing, and the tenant remains at liberty to file a separate Application in relation to the first tenancy (the original rental unit).

The tenant chose option 2 and we proceeded on the tenant's claim for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation, or tenancy agreement and for the return of all or part of the security deposit for the original tenancy.

Prior to the hearing the landlord had submitted the second page of an Application for Dispute Resolution with her evidence and upon review of the file I requested administrative staff contact the landlord to advise that the submission would not be considered an Application as she had failed to provide the first page and had failed to pay the Application Fee. The landlord remains at liberty to file a separate Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order of compensation for costs incurred resulting from a flood in the rental unit; for the issuance of a Notice to End Tenancy for Landlord's Use; for the loss of quiet enjoyment; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on April 12, 2010 for a 1 year fixed term tenancy that began on May 1, 2010 with a monthly rent of \$925.00 due on the 1st of each month and a security deposit of \$462.50 paid. The tenancy agreement stipulated that the tenant must vacate the rental unit at the end of the fixed term (April 30, 2011).

The tenant testified that on April 30, 2011 her rental unit flooded as a result of a sewer back up and that while she had been out all day when she returned home she immediately informed the landlord and a crew was called to come in and assess and repair the damage. The tenant states that as a result, the landlord moved the tenant and her child to a larger unit on an upper floor, as she had already paid rent for May 2011.

The landlord's agent confirms these events and notes that she informed the tenant that this would be a temporary measure until she could find more suitable accommodation as the unit was larger and normally rented for \$1,325.00, a \$400 dollar difference from the rent on the unit in the basement.

The landlord's agent provided no testimony as to why she had not enforced the clause in the tenancy agreement that required the tenant to move out at the end of the fixed term. The agent testified that she had been trying to set a time with the tenant to do a move out inspection but that never materialized.

The agent also stated that she had not yet started advertising the rental unit because she often waits until she has an idea of the condition of the rental unit before she advertises or shows the rental unit to prospective new tenants. The agent testified that she doesn't always do this but she does once in a while.

The agent testified that despite the fact that the tenancy was due to end on the day of the flooding she offered the tenant the upper floor rental unit because the tenant and her child had no place to go and the landlord wanted to help them out.

The agent testified that she issued a 2 Month Notice to End Tenancy using a #RTB – 32 Form to end the tenancy because the rental fixed term agreement had ended and the rental unit was unliveable due to a sewer back up on April 30, 2011.

The tenant provided testimony that she needed to go out for food immediately after the flooding and when the restoration company would not allow her to enter the rental unit. The tenant provided receipts. One receipt, in the amount of \$21.75 was dated June 4, 2011 and the tenant testified this was submitted in error.

The tenant submitted a copy of a hydro bill showing usage from April 7 to May 13, 2011 showing usage specifically from May 1 to May 13 with charges of \$11.13 the tenant attributes to the company working on the restoration.

The tenant seeks compensation for the presence of “rodents inhabiting Unit 2 from January 4th – April 30th 2011 and for no heat for several days: February 24th – 28th 2011.” The tenant testified that she reported these issues to the landlord but that nothing was done about them. The tenant provided no documentary evidence confirming any correspondence with the landlord regarding these issues. The agent testified the tenant did not report these problems.

Despite requesting in the hearing and in her evidence to have the rent for the month of May 2011 returned, the tenant did not include this amount in her details of dispute. The tenant sought the following compensation:

| Description | Amount |
|--|-------------------|
| Food – during displacement | \$63.14 |
| Utility Costs – for restoration company usage during renovations | \$11.13 |
| Compensation for issuance of a Section 49 Notice to End Tenancy | \$925.00 |
| Return of double the amount of the security deposit | \$925.00 |
| Loss of Quiet Enjoyment – January to April 2011 | \$1,850.00 |
| Costs for preparing case (printing and mail) | \$32.87 |
| Total | \$3,807.14 |

Analysis

In order to establish if the tenant has a valid claim against the landlord for the above items, I must first determine the meaning of the actions taken by all parties at the end of the tenancy in this rental unit.

Despite having a fixed term tenancy agreement that required the tenant to vacate the rental unit at the end of the tenancy, the landlord received rent for the month of May 2011, thus reinstating a tenancy. When the rental unit that the tenancy applied to was flooded, I find the landlord further extended the tenancy by providing the tenant with an alternate unit in the residential property.

As such, I find the parties entered into a new verbal tenancy in the new rental unit, with the same terms as the original tenancy, except for the location and size of the rental unit. As a result, I find the landlord was not required to return any portion of the security deposit but rather that the landlord could retain the security deposit held in trust with the landlord for the new tenancy.

For the remaining claims the burden is on the Applicant tenant to provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. The steps taken, if any, to mitigate the damage or loss.

In relation to the tenant's claim for compensation equivalent to 1 month's rent because the landlord issued her a 2 Month Notice to End Tenancy for Landlord's Use, I find that as a result of the flooding and my above finding, the tenancy changed location and the tenant would not have been required to vacate this rental unit.

As the notice was issued the same day as the flooding, I find any notice specific to the location of the first rental unit would have no force or effect.

In addition and despite the landlord's use of a #RTB - 32 form to convey the reasons she thought the tenant should leave, she sufficiently changed the form to not represent any reasons that that notice is used for in accordance with Section 49 of the *Act*.

For these reasons, I find the landlord did not issue a notice to end tenancy in accordance with Section 49 of the *Act* and therefore the tenant is not entitled to the compensation outlined in Section 51.

In regard to the tenant's claim for meals out of the home, I find the tenant failed to establish that since the landlord had relocated her to a new rental unit she still needed to go out for meals or why should could not use the kitchen in the new rental unit.

I also find that despite the tenant not living in the rental unit from May 1 to May 13, 2011, she failed to provide any evidence to support her claim that the restoration company was responsible for the hydro charges in her bill.

I find the tenant has also failed to provide any evidence at all to establish that she suffered a loss as a result of a rodent infestation or loss of heat for 4 days in February 2011; that any loss resulted from a violation of the *Act*; the value of that loss; or any steps to mitigate the loss.

As the tenant has not been successful in her Application, I find that she is not entitled to costs associated with preparing for the case or to recovery of the filing fee.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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: September 02, 2011.

Residential Tenancy Branch