



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant filed her Application requesting monetary compensation under the Act for double the security deposit, two months' rent for a bad faith eviction, compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

The Landlord filed her Application seeking a monetary order for alleged damages to the rental unit, for money owed or compensation under the Act or tenancy agreement, to retain the security deposit in partial satisfaction of the claims, and to recover the filing fee for the Application.

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

Is the Tenant entitled to the monetary relief sought?

Is the Landlord entitled to the monetary relief sought?

Background and Evidence

This tenancy began on March 1, 2007, with the parties agreeing to a monthly rent of \$850.00. By the end of the tenancy the rent had increased to \$909.66. The Tenant paid the Landlord a security deposit of \$425.00 on February 11, 2007. Neither party

entered a copy of a written tenancy agreement, if one was used, in evidence. The subject rental unit is a condominium in a strata building.

On or about February 24, 2011, the Landlord served the Tenant with a two month Notice to End Tenancy for the Landlord's use of the rental unit (the "Notice"). The reason to end the tenancy, stated on the Notice, was the Landlord wished to occupy the rental unit herself.

The Tenant vacated the rental unit on April 28, 2011.

Tenant's Claims

The Tenant provided the Landlord with a written notice of her forwarding address to return the security deposit to by registered mail, sent on May 18, 2011, and did not sign over a portion of the security deposit. The Landlord did not return the security deposit and did not file a claim to keep it until August 12, 2011.

The testimony of the Tenant was that the Landlord did not perform incoming or outgoing condition inspection reports in accordance with the Act. The Landlord agreed these reports were not done.

The Tenant alleged that the Landlord had not used the rental unit for the purpose stated in the Notice. The Tenant testified that instead, the Landlord had listed the property for sale. She provided in evidence a print out of a for sale advertisement for the subject rental unit, posted on an Internet realty site dated June 9, 2011.

The Tenant further claims for an access key fob she purchased, to replace the original fob provided by the Landlord when it ceased to function.

The Tenant claims for \$850.00 for double the security deposit, \$1,819.32 for two months' rent, \$65.00 for the replacement key fob, and \$50.00 for the filing fee for the Application.

In reply, the Landlord testified that she did not know she was required to perform condition inspection reports. She testified that she walked through the rental unit with the Tenant when she was moving out and initially told her that she would return the security deposit. After the Tenant vacated the Landlord was informed of charges and fines from the strata council allegedly related to the tenancy.

The Landlord testified that she moved into the rental unit on May 7, 2011, and was living in the rental unit still. She had listed the rental unit for sale but had not sold the property. The Landlord testified that the address on her Application, which is the same as the rental unit, was evidence she is still occupying the rental unit.

The Tenant replied that the Landlord had always had her mail sent to the rental unit, and the Landlord did not deny this. The Tenant submitted the Landlord had failed to prove she was occupying the rental unit.

The Landlord alleged that the Tenant had already deducted the money for the key fob from her rent. The Tenant denied this and said although she had deducted other items from her rent with the Landlord's agreement, she had not deducted this from rent.

Landlord's Claims

The Landlord alleged the Tenant moved out without providing notice to the strata that she was moving. The Landlord provided evidence, in the form of a letter from the strata, that she had been fined \$300.00 for breaching a strata bylaw requiring 48 hour notice of a move in or out of the strata lot.

The Landlord also alleged that the Tenant had damaged a wall in front of the elevator, and the door frame and door of the rental unit, when she was moving out. The strata charged the Landlord \$527.30 for these repairs and notified her in a letter.

The Landlord alleges that the Tenant damaged the garburator in the rental unit. The Landlord testified that sometime after she regained possession of the rental unit, about two weeks, she tried to use the garburator and it did not work. The Landlord provided an invoice in evidence for the replacement of the garburator.

In reply the Tenant testified she was not aware she had to give the strata council notice she was vacating, as she did not receive a copy of the bylaws from the Landlord. The Tenant did not recall signing a Form K for the Landlord or strata.

The Tenant denied causing the door scratches and damage in the common areas of the strata. She alleged that the door scratches were old and were there when she moved in.

The Tenant testified that the garburator worked fine when she left the unit, as she had used it when she was moving out. The Tenant further testified that the invoice from the Landlord for the garburator was dated in August, some four months after the Tenant vacated.

The Landlord testified she did not remember giving the Tenant copies of the bylaws, however, the Landlord alleges she had the Tenant sign a Form K.

The Landlord testified it took her until August to have the garburator fixed, as she was busy with work and had to arrange for her nephew to meet the repairman at the rental unit.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Based on the above, the testimony and evidence, and on a balance of probabilities, I make the following findings.

Tenant's Outcome

I find that the Landlord breached section 38 of the Act by failing to return or claim against the security deposit within 15 days of the end of the tenancy or receipt of the Tenant's forwarding address in writing.

By failing to perform incoming or outgoing condition inspection reports the Landlord extinguished her right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or they are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not

entitled to retain any portion of the security deposit or interest and must repay the Tenant double the security deposit, plus the interest accrued.

I accept the evidence of the Tenant regarding the Landlord not living at the rental unit, and find the Landlord failed to provide sufficient evidence that she was still occupying the rental unit as set out in the Notice.

I accept the uncontradicted testimony of the Tenant that the Landlord had her mail delivered to the rental unit, yet lived somewhere else during the tenancy. In further support of the Landlord not occupying the rental unit, I note the correspondence to the Landlord from the strata council was sent to a different address for the Landlord on May 31, 2011, which is several weeks after when she testified she starting occupying the rental unit. Therefore, I find the Landlord breached section 51(2) of the Act by failing to use the rental unit for the stated purpose in the Notice for at least six months and must pay the Tenant two months of rent.

I allow the claim of the Tenant for the key fob, as I find the Landlord failed to show the Tenant had been reimbursed for the key fob. The Landlord produced no receipts for rent or an accounting of rent paid indicating the Tenant had deducted the amount for the key fob. Therefore, I order the Landlord to reimburse the Tenant for this amount.

Landlord's Outcome

I dismiss the Application of the Landlord, as I find she failed to prove her claims against the Tenant.

I find the Landlord failed to provide sufficient evidence that she provided the Tenant with a copy of the bylaws, requiring her to provide a move out notice to the strata. There was no form K in evidence, nor was there any written tenancy agreement in evidence showing this requirement.

I find the Landlord failed to provide sufficient evidence that the Tenant had damaged a wall in front of the elevator or the door frame and door of the rental unit. The strata letter is not evidence of the Tenant causing the damage, but rather that the Landlord has been charged with the damages. There was no evidence provided by the strata or the Landlord that directly connect the Tenant to the damages, or evidence there were no other third parties moving out at the time who may have caused the damage.

I find the Landlord failed to provide sufficient evidence the Tenant damaged the garburator. There was no evidence provided of what was wrong with the garburator, or that the Tenant misused it, or broke it. The significant amount of time between the

Tenant vacating the rental unit and the Landlord having the garburator repaired, make it more probable it stopped working after the Tenant vacated.

Conclusion

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 **\$2,797.15**, comprised of \$850.00 for double the security deposit, \$12.83 in interest on the original amount held, \$1,819.32 for two months of rent compensation, \$65.00 for the key fob, and \$50.00 for the filing fee for the Application.

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.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 23, 2011.

Residential Tenancy Branch