



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee.

The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began in 2008 with monthly rent of \$800.00 of which \$370.00 was the tenant's portion and the tenant paid a security deposit of \$180.00.

On May 28, 2011 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The tenant testified that she rented a room in what could be described as a rooming house and that during her tenancy there had been on-going issues with the landlord which included the landlord telling the tenant she could not use the house phone or have guests over and that the landlord would often threatened the tenant with eviction. The tenant stated that the landlord would also enter her room when she was not home and on one occasion took the tenant's space heater from her room, cut the cord off it and threw it out.

The tenant testified that the landlord started calling her in early July asking her when she was leaving as he had a new tenant waiting to move into her room. The tenant stated that the landlord asked her leave July 8th and gave the tenant \$100.00 for leaving. The tenant stated that she paid her portion of the July rent but that the landlord did not provide her with a month's compensation based on the 2 month notice.

The tenant stated that the day she was vacating the rental unit a new tenant moved in to her room and that the landlord did not and has not occupied the rental until per the notice that she was given.

The tenant stated that she was the only female residing in the house and that her bedroom had a broken glass window. The tenant stated that she asked the landlord repeatedly to replace the door with a solid door so that she had some privacy but that he never did so. The tenant said that she was able to find an inexpensive door and replaced it herself but that the landlord never reimbursed her the \$60.00 she paid for the door.

The tenant stated that one day when the landlord was very upset about her using the house phone, he took the cordless phone that belonged to the tenant and threw it out. The tenant stated the landlord never reimbursed her for the phone which she had paid \$100.00 for.

The tenant testified that when she left the rental unit on July 8, 2011 the landlord told the tenant he was only giving her \$80.00 back from her security deposit because the room needed cleaning although he had told the tenant he would pay her \$100.00 for vacating early. The tenant stated that she has no agreement in writing with the landlord to keep all of her security deposit.

The tenant said that in May 2011 the landlord got very angry with the tenant for using hot water to do laundry. The tenant said that the landlord then went to the residence, started yelling, pounding and kicking on the door and then kicked the door open. The tenant stated that when the door was kicked open it flew back and the handle of the door went into and broke the tenant's television. The tenant stated that the landlord originally told her he would replace the television but that he never did.

The tenant in this application is seeking compensation for the following:

- 2 months rent for the landlord not complying with the terms of the 2 month notice
- Return of double the security deposit
- \$800.00 compensation for the damaged television
- \$100.00 compensation for the cordless phone
- \$60.00 for the bedroom door

Analysis

Based on the documentary evidence and undisputed testimony of the tenant I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for damage or loss and return of the security deposit.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on the grounds that the landlord would be occupying the rental unit however the landlord did not occupy the rental unit and simply moved a new tenant in. Sections 49 and 51 of the Act is very clear on what is required of a landlord when a 2 month notice is given and the resulting penalty to the landlord if the landlord does not comply.

The tenant per the *Act* is entitled to 1 month's rent compensation on a 2 month notice however that compensation was never provided to her by the landlord. Therefore the tenant is entitled to \$370.00 compensation.

The landlord did not use the rental unit for the reason specified on the notice therefore per the *Act* the tenant is entitled to 2 month's rent compensation in the amount of \$740.00.

Residential Tenancy Act **Tenant's compensation: section 49 notice, 51** speaks to:

(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I accept the tenant's testimony regarding the damage done to personal property and the on-going threatening behaviour of the landlord. As the tenant's cordless phone was 2 years old the tenant will be awarded \$50.00 for replacement of the phone.

The tenant stated that she had bought the television in used condition at a cost of \$800.00 but agreed that 40" LCD televisions could now be purchased new for \$600.00. Therefore I find that the tenant is entitled to \$500.00 compensation for replacement of the television damaged through the landlord's actions.

The tenant ultimately had to replace the door to her bedroom at her own expense and this door remained in the rental property at the end of the tenancy. Therefore I find that the tenant is entitled to \$60.00 compensation for purchase of the door.

The landlord has not complied section 38 of the *Act* in regards to returning the security deposit to the tenant. Therefore the tenant is now entitled to \$360.00 compensation in return of double the security deposit. This amount will be set off by the \$80.00 returned to the tenant by the landlord.

Conclusion

I find that the tenant has established a monetary claim for **\$2000.00** in compensation for damage or loss and return of the security deposit and I grant the tenant a monetary order under section 67 of the *Act* for this amount.

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 5, 2011.

Residential Tenancy Branch