



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

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 only.

The tenant provided confirmation in the form of tracking information from Canada Post to show she served the landlord with notice of hearing documents via registered mail on August 30, 2011 to the service address provided by the landlord and that the landlord did not claim the registered mail.

The tenant testified that this is consistent with the landlord's refusal to communicate with her for the last couple of weeks of the tenancy and after the tenancy ended. Based on this I find the landlord deliberately avoided service of these documents to attempt to avoid her obligations under the *Residential Tenancy Act (Act)*.

Section 89 of the *Act* requires a party filing an Application for Dispute Resolution to serve the respondent in a number of ways, including by registered mail. Section 90 stipulates that a document served by registered mail is deemed received on the 5th day after it was mailed.

Based on the above, I find the landlord was sufficiently served with notice of this hearing.

In the tenant's Application, she named two parties as landlord, however, as the tenancy agreement submitted names only one of those parties, I amend the tenant's Application to only name the party named as her landlord in the tenancy agreement.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and pet damage deposit; to compensation for

the loss of quiet enjoyment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 29, 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on May 3, 2011 for a 6 month fixed term tenancy that began on May 4, 2011 for a monthly rent of \$1,010.00 due on the 1st of each month with a security deposit of \$500.00 and a pet damage deposit of \$200.00 paid on May 2, 2011.

The tenant submitted a noticed to the landlord to end the tenancy effective July 30, 2011. The tenant agreed to try to locate replacement tenants but each time the tenant put a name forward the landlord indicated they were not suitable.

On the final day of the tenancy, the tenant testified, the landlord told her that he had accepted the first potential tenant this tenant had suggested and they would be moving in right away. The tenant testified the landlord then cashed the tenant's post dated cheque for rent for August, 2011.

The tenant also testified that a couple of weeks prior to the end of the tenancy the landlord notified her that she wanted to complete an inspection of the unit. The tenant gave the landlord permission to do so. Later the tenant found out the landlord entered the unit to take photographs so that she could post them online as part of her listing for selling the rental unit. The photographs of the unit show intimate aspects of the tenant's living situation and are now posted online.

The tenant also testified that the landlord informed her that on the last two days of the tenancy her realtor would be holding an open house and that she either had to vacate the unit early or she would have be out of the unit for those two days. The tenant moved out of the rental unit two days early.

The tenant provided the landlord with her forward address in writing on July 29, 2011. She handed the landlord a note and the landlord signed confirmation that she received it, which was provided into evidence. This was witnessed by a third party.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept, based on the undisputed testimony and the document evidence that the landlord received the tenant's forwarding address on July 29, 2011 and that due to the actions of the landlord the end of the tenancy was July 29, 2011. As such, I find the landlord had until August 13, 2011 to return the tenant's security deposit and pet damage deposit to be compliant with Section 38(1).

As the landlord has failed to return the deposits to date, I find the landlord has failed to comply with Section 38(1) and the tenant is therefore entitled to return of double the amount of both deposits.

As the tenant had moved out prior to July 31, 2011 I find the landlord had no authority to cash a cheque from the tenant and in fact should have returned that cheque to the tenant prior to the end of the tenancy. I find the tenant is entitled to the return of the rent cheque for August, 2011.

Section 29 allows a landlord to enter a rental unit as long as the purpose for entering is reasonable. I accept the tenant thought the landlord's intentions were related to the tenancy and allowed the landlord to enter. I also accept, based on the undisputed testimony before me that the tenant later found out the reason for entry was not consistent with the *Act*.

Section 28 states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy and exclusive possession of the unit. Based on the landlord's unlawful entry of the unit to take photographs of the rental unit and post those photographs on line when the landlord knew the rental unit would be vacant in a few weeks was a gross violation of the tenant's right to privacy.

I also find that by the landlord forcing the tenant to vacate the rental unit two days earlier than anticipated, or not allowing her to be there in the final days of her tenancy to complete her packing the landlord violated the tenant's right to exclusive possession.

For these violations of the *Act*, I grant the tenant \$500.00 in aggravated damages.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,960.00** comprised of \$1,010.0 rent owed; \$1,000.00 double the security deposit; \$400.00 double the pet damage deposit; \$500.00 aggravated damages and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: November 18, 2011.

Residential Tenancy Branch