



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; FF

Introduction

This is the Tenant's application for a monetary order for double the security deposit paid to the Landlord; for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Tenant entitled to compensation pursuant to the provisions of Sections 38(6)(b) and 67 of the Act?

Background and Evidence

This tenancy began on January 1, 2010. A copy of the tenancy agreement was provided in evidence. The tenancy ended on July 31, 2011, as a result of a mutual agreement to end the tenancy dated July 25, 2011. A copy of the Mutual Agreement to End a Tenancy was provided in evidence.

Monthly rent was \$1,400.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$350.00 at the beginning of the tenancy.

The Tenant testified that she provided her forwarding address in writing to the Landlord on July 25, 2011, when she signed the Mutual Agreement to End a Tenancy. The Landlord testified that he did not receive her forwarding address on July 25, 2011, and that he e-mailed her several times asking for it. He stated that he didn't receive her forwarding address until she provided it to him in an e-mail on August 30, 2011. Copies of e-mails were provided in evidence.

On August 2, 2011, the parties met to complete a condition inspection of the rental property. The Tenant agreed that the Landlord could apply \$60.00 from the security deposit for patching a hole in the kitchen wall and garbage removal. A copy of the Condition Inspection Report was provided in evidence. The Landlord testified that he

wrote the Tenant's address down on the Condition Inspection Report after the Tenant gave it to him on August 30, 2011.

The Tenant testified that the Landlord returned the \$350.00 pet damage deposit to the Tenant and also provided the Tenant with a cheque in the amount of \$640.00, representing return of the residue of the security deposit. The Tenant testified that the cheque in the amount of \$640.00 was returned to the Tenant NSF. She testified that the Landlord transferred \$200.00 to her bank account and told her that he would send the remainder on or before August 20, 2011. In the meantime an additional utility bill came in that was the Tenant's responsibility, so she agreed he could deduct that amount from the \$440.00 he now owed her.

The Tenant seeks compensation in the amount of double the security deposit, **\$1,400.00**.

The Landlord testified that he deposited \$415.57 (\$440.00 minus the outstanding water bill) into the Tenant's bank account on August 31, 2011, which he stated is the day after he received her forwarding address in writing. The Landlord submitted that he owes her no compensation because he returned the residue of the security deposit well within 15 days of receipt of her forwarding address in writing.

The Tenant testified that the Landlord had originally provided her with a Two Month Notice to End the Tenancy for Landlord's Use on May 1, 2011. The Landlord told her that she would be compensated in the equivalent of one month's rent. The Tenant now seeks an additional two month's compensation in the amount of **\$2,800.00** for wrongful eviction because the Landlord sold the house instead of moving in.

The Landlord testified that he discovered he had made a mistake when his Realtor explained to him that a landlord cannot evict a tenant because he wants to sell the house and therefore the Notice was wrong. He testified that his realtor explained this to the tenant but she got very upset. The Landlord testified that he paid the Tenant \$1,400.00 anyway, when she signed the Mutual End of Tenancy Agreement.

The Tenant testified that she was harassed by the Landlord and his realtor at the end of the tenancy. She stated that the Landlord or his realtor would leave 24 hour Notice to show the rental property in her mailbox the day before the showing, which was insufficient time. She stated that the Landlord phoned her after 9:00 p.m. at night requesting access. The Tenant testified that the Landlord entered her home without her knowledge or permission on July 10, 2011. The Tenant seeks compensation in the amount of **\$1,400.00** for loss of quiet enjoyment.

The Landlord testified that his real estate agent left notices for the Tenant and that the Tenant was attempting to impede his sale of the house. The Landlord testified that he did enter the rental unit on July 10, 2011, but that he had left a message on her phone. The Landlord testified that the Tenant was away that weekend and had given him permission to show the house on Saturday, July 9, 2011. He stated that he assumed the Tenant got his message and it was OK for him to view the house again on July 10, 2011.

The Landlord stated that he did not harass the Tenant and that she threatened to sue him if he didn't give her \$1,400.00.

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Analysis

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenant's application in this Decision.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

The Tenant testified that she provided her forwarding address in writing to the Landlord on July 25, 2011, however the Tenant provided insufficient evidence to support her claim. The Mutual Agreement to End the Tenancy did not indicate her forwarding address. The Condition Inspection Report which was completed by the parties on August 2, 2011, has a spot for the Tenant to write in her forwarding address. The Landlord stated that the Tenant did not provide her forwarding address on the Condition Inspection Report and that he wrote her forwarding address on the Report on August 30, 2011, after receiving her e-mail. The Tenant did not dispute this. The handwritten address on the Report appears to be very similar to the remainder of the Landlord's handwriting and does not resemble the Tenant's.

For the above reasons, I find that the Landlord received the Tenant's forwarding address by e-mail on August 30, 2011. The Landlord returned the residue of the security deposit by direct deposit into the Tenant's account the following day. The Tenant does not dispute that the Landlord made this deposit. The Tenant's application for compensation pursuant to the provisions of Section 38(6) of the Act is dismissed.

The Tenant seeks compensation for wrongful eviction in the amount of \$2,800.00. The Tenant and the Landlord entered into a Mutual Agreement to End the Tenancy and I find that the Tenant was not evicted. Therefore, this portion of the Tenant's application is dismissed.

The Landlord breached the Act by accessing the Tenant's home without her permission on July 10, 2011. However, the Landlord has already voluntarily provided the Tenant with one month's free rent and I find that the Tenant has been adequately compensated. This portion of her application is dismissed.

The Tenant has not been successful in her application and is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's application is dismissed 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: November 01, 2011.

Residential Tenancy Branch