



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38; and
2. A Monetary Order for compensation for damage – Section 67.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on April 1, 2011 and ended on September 15 or 18, 2011. The Landlord collected a security deposit from the Tenant in the amount of \$225.00 on May 24, 2011. A move-in and move-out inspection was not offered by the Landlord or completed by the Landlord and Tenant. The Tenant provided the forwarding address in writing on October 15, 2011. The Landlord states that the security deposit was retained for damages to the unit however, the Landlord did not file an application for dispute resolution to make a claim against the security deposit. The Landlord states that the Tenant verbally agreed to allow the Landlord to retain the security deposit for cleaning costs to the unit. The Tenant states that return of double the security deposit was not being waived.

The Tenant states that the Landlord had a dog on the property upon which the tenancy was located for the last 6 weeks of the tenancy and that this dog sometimes would bark at her and her guests, sometimes not allowing the Tenant to enter her unit. The Tenant states that the dog was never on a leash once nipped at her grandson and scared the Tenant. The Tenant claims that as a result of the dog, she became psychologically ill however the Tenant states that she was unable to obtain medical verification of such illness as she was incapacitated due to other recent illness. A Witness for the Tenant states that on numerous occasions when he visited, the dog would approach him and bark. The Tenant states that she lost quiet enjoyment of her unit and claims an amount equivalent to two month's rent.

The Landlord denies that the dog would harm anyone and states that the dog is gentle and timid. The Landlord submitted letters from third parties in relation to the dog's behaviour with adults, children and the Tenant herself. The Landlord also supplied photos of the dog.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Section 38 further provides that a landlord may retain an amount from a security deposit if at the end of a tenancy the tenant agrees in writing to such retention.

Based on the undisputed evidence of the Parties, I find that the Tenant did not provide an agreement in writing for the Landlord to retain any part of the security deposit. The Landlord cannot therefore rely on the Tenant's oral agreement to retain the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of

receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenants double the security deposit in the amount of **\$450.00**.

In a claim for damages the onus is on the claiming Party to establish the claim on a balance of probabilities. I found the oral evidence of the Tenant in relation to the dog to be weak. Further, although the Tenant provided a witness, this Witness stated only that the dog barked a lot. The Landlord's evidence in relation to the dog however was far more compelling and detailed. As a result, I find that the Tenant has failed to establish that the presence of the dog during the last 6 weeks of the tenancy caused the Tenant a loss. I therefore dismiss this part of the Tenant's claim.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$450.00**. If necessary, this order may be filed in the Small Claims Court and 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: January 12, 2012.

Residential Tenancy Branch