



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application by the Tenant for a monetary order for return of double the security deposit, the interest on the deposit, for loss of use of the rental unit, to recover rent paid for a service terminated by the Landlord during the tenancy and for the filing fee for the claim.

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.

Preliminary Matter

In their written submissions and testimony the Landlords explained that one of the two Respondents named in the Tenant's Application was not in fact a landlord under the Act. Therefore, I have amended the style of cause in this matter accordingly, and only included one Landlord.

Issue(s) to be Decided

Has the Landlord terminated a service or facility contained in the tenancy agreement in accordance with the Act?

Should the rent be reduced for loss of use of the rental unit?

Has there been a breach of section 38 of the Residential Tenancy Act by the Landlord?

Background and Evidence

This tenancy began May 1, 2007, with the Tenant and the previous owner of the property entering into a written tenancy agreement. The monthly rent was agreed upon at \$600.00 per month and the Tenant paid a security deposit of \$300.00 on April 12, 2007. There are two terms in the written agreement which are relevant to the issues in this case. First, "cablevision" was included in the rent; and secondly, the parties wrote in the tenancy agreement that interest was not payable on the deposit.

During the course of the tenancy the previous owner of the rental unit passed away and the current Landlord, named here as the Respondent, inherited the property. The Landlord testified she had title to the property in April of 2010.

The Tenant testified that in April of 2009, it came to the attention of the cablevision provider that the prior owner had wired the rental unit with cablevision without proper authority to do so. The Tenant testified that the original cablevision in the rental unit had only a few channels and consisted of some wires poking through the wall.

Consequently the cablevision was removed from the rental unit. The Tenant testified he and the prior owner discussed this reduction in service at the time the cable was cut off and the prior owner refused to compensate the Tenant or provide an alternate service. The Tenant testified he obtained alternate television service through his internet service provider, the telephone company. The Tenant claims \$91.50 per month for 27 months, totaling \$2,470.50 for replacement of the cablevision.

The Tenant testified that there was a flood in the rental unit in August of 2010 and the rental unit had extensive renovation work done to it. He testified that the drywall was cut out from the floor two feet up the wall, the flooring was removed and he lost use of much of the rental unit. The Tenant testified the work took three to four months to complete. The Tenant claims for a reduction in rent of some \$3,000.00 for this time period. He acknowledged the Landlord had waived one month of rent during these repairs.

The Tenant vacated the rental unit on August 1, 2011. The Tenant testified he personally provided the Landlord with a written notice of the forwarding address to return the security deposit to on August 1, 2011, and did not sign over a portion of the security deposit. The Tenant recalled he gave the Landlord a copy of the forwarding address on a slip of paper when he was upstairs talking with her. I note the Tenant has provided a copy of the note with the address, and it is marked "copy 2 of 2". According

to his testimony, during this conversation the Landlord wanted to wait ten days before returning the deposit.

The testimony of the Tenant was that no incoming or outgoing condition inspection reports were performed.

The Tenant claims \$600.00 for the return of double the security deposit. The Tenant testified that he did not know that interest is required to be paid on the deposit when he signed the tenancy agreement and requests the interest be paid to him.

In reply to the cablevision dispute, the Landlord testified that she was not present at the time the cable was cut off to the rental unit and has no information regarding discussions that may have taken place between the Tenant and the deceased previous owner. The Landlord has submitted cable bills, which I note are still in the deceased owners' name as of July 25, 2011, indicating the monthly cable bill for the upper floor in the rental unit is \$46.93.

In reply to the loss of use of the rental unit, the Landlord testified that she offered to put the Tenant up in a hotel during the restoration work but the Tenant refused this. The Landlord alleges that the Tenant refused to be put up in a hotel because he was smoking marijuana in the rental unit and did not want to go to a hotel.

The Landlord testified that the repairs were completed in six weeks. The Landlord provided a written receipt signed by the Tenant agreeing the payment of rent for the rental unit for the month of September 2010 was waived due to the work in the rental unit.

The Landlord testified she did not return the security deposit to the Tenant because she felt the rental unit was not properly cleaned and that the Tenant had caused damage to the rental unit. She testified that she had to pay a cleaner to come into the rental unit and had to pay for repairs to be done. She testified that she told the Tenant she would return the security deposit when he gave her the keys for the rental unit.

The Landlord also alleges the Tenant did not provide her the forwarding address to return the security deposit to until she received his evidence for the hearing. She denies having received it on August 1, 2011, in person from the Tenant.

The Landlord submitted that the Tenant had agreed in the tenancy agreement no interest was payable on the deposit and therefore, none should be paid.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached the Act and the tenancy agreement, for the following reasons.

Under section 27(2) of the Act the Landlord was allowed to terminate the supply of cablevision as it was not a material term of the tenancy agreement. However, section 27(2) also required the Landlord to reduce the rent in an amount that is equivalent to the reduction in value of the tenancy agreement resulting from the termination of the service.

I find that the bills submitted by the Tenant are not equivalent, but are greater in value than the loss of value to the tenancy agreement. I accept the evidence of the Landlord and find that the cable bill supplied is the equivalent in value for the loss of the service. Therefore, I find the Tenant is entitled to the return of \$46.93 for each of the 27 months he paid for his own cablevision, or \$1,267.11 in total, for the termination of this service.

I find that the Tenant has been adequately compensated by the Landlord for the loss of use of the rental unit during the remediation work. The Landlord waived an entire month of rent, in the amount of \$600.00, to compensate the Tenant. The Tenant had vague evidence on the amount of time the work took to complete and he stayed in the rental unit the entire time.

Furthermore, the Tenant must have had some use of the unit during this period and consequently would not be entitled to a complete reduction in rent for this entire time period. I find that the \$600.00 rent waiver is adequate compensation for the entire time the work was being performed at the rental unit.

As to the security deposit, there was no evidence to show that the Tenant had agreed in writing that the Landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

I accept the testimony of the Tenant over that of the Landlord's in regard to when the forwarding address was given to the Landlord. The Tenant had a detailed account of the conversation that took place at the time he gave the Landlord this address, as compared to the Landlord's mere denial.

In any event, the Landlord agreed she had the forwarding address of the Tenant in late December of 2011, when she received his Application and the Notice of this Hearing. She could have returned the deposit or claimed against it within 15 days of receipt of these documents as they contained his forwarding address, however, it was clear by the evidence and testimony of the Landlord she never intended to return the security to the Tenant.

More importantly, by failing to perform an outgoing condition inspection report the Landlord extinguished her claim against the security deposit, pursuant to section 36(2) of the Act.

This leads me to find the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

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 she felt she was entitled to it or was 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 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 and under section 38 I must order her to return double the security deposit to the Tenant.

As to the interest on the deposit, the Act and the regulation prescribe the amount of interest that the Landlord must pay on the security deposit. Interest is required by the Act and is not an optional term that the parties can avoid. Under section 5 of the Act, the parties could not agree to contract outside of the Act or regulation. Therefore, the Landlord must pay the Tenant interest on the security deposit held.

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 **\$1,924.90**, comprised of \$1,267.11 for loss of the cablevision service during the tenancy, double the security deposit (2 x \$300.00), the interest on the original amount held of \$7.79, and \$50.00 towards the \$100.00 filing fee for filing this Application. I have reduced the amount awarded to the Tenant for the

filing fee for the Application as I find the Tenant was not completely successful in this claim.

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 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: February 17, 2012.

Residential Tenancy Branch