



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of all or part of the pet and security deposits, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to sections 7 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that they entered into a written tenancy agreement that began on June 1, 2011. Rent was payable on the first of each month in the amount of \$1,175.00 and on June 1, 2011 the Tenant paid \$600.00 as the pet deposit, \$600.00 as the security deposit, plus \$150.00 as the key fob deposit. The tenancy agreement stipulates that the tenancy may be ended with one month's notice.

The Tenant affirmed that she attended the move-in walk through on June 1, 2011 and the previous tenant's possessions and carpet cleaner were still in the unit. She recalls having a document to write down the condition at the onset but could not locate it during the hearing. She confirmed that no move out inspection was conducted at the end of her tenancy.

The Tenant is seeking to recover her costs for having the carpet cleaned twice, for the cost of new carpet, underlay, and installation, for painting and repairs to the unit, plus the return of her deposits.

The Tenant advised that she was not able to contact the Landlord during her tenancy so she went ahead with the repairs and work to the unit without having the Landlord's permission. She did however have verbal permission to paint the unit.

The Tenant stated that she faxed her notice to end tenancy to the company fax number previously used by the Landlord on August 30, 2011 to end her tenancy effective September 30, 2011. She had vacated the property by the end of August 2011.

The Landlord affirmed that no move out inspection was conducted; he does not possess an order authorizing him to keep the deposits, he does not have the Tenant's permission to keep the deposits, and he has not yet made an application for dispute resolution to keep the deposits.

The Landlord advised that he gave the Tenant verbal permission to paint one feature wall in the living room, at her own cost with the stipulation that the Tenant would be responsible to return the wall color back to its original color at the end of the tenancy.

The Landlord stated that he spoke with the Tenant a couple of weeks into June 2011 and at no time did she mention problems with the unit. He then contacted her to advise he was going out of the country for two months and to contact his son in case of an emergency.

After a brief discussion the Landlord confirmed that the fax which the Tenant used to fax her notice to end tenancy was in fact his son's company where the Landlord is employed and where he has conducted Landlord business at in the past.

Analysis

I have carefully considered the aforementioned and the pertinent documentary evidence that was submitted by both parties which included, among other things, the Landlord's written statement, a copy of the tenancy agreement, the Tenant's monetary order worksheet, and receipts.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7

and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The Tenant is seeking to recover costs for work she performed on the Landlord's property without permission. The work that was performed was cleaning of carpets, carpet replacement and painting of the unit.

Upon careful review of the aforementioned I find there to be insufficient evidence to prove the work performed and paid for by the Tenant would constitute emergency repairs. Furthermore I find that in the absence of a written agreement stipulating the Tenant was entitled to reimbursement of such expenses, there is no evidence to prove the Landlord has breached the act or that the Tenant did what was reasonable to mitigate her loss. Accordingly, I find the Tenant has not met the burden of proof for damage or loss, as listed above and I dismiss her claim for costs for maintenance of the rental unit.

I accept the Tenant's evidence that she served the Landlord with her notice to end tenancy and her forwarding address, in writing, via fax on August 30, 2011. The tenancy ended September 30, 2011.

There was insufficient evidence to support the Landlord's claim that he suffered a loss from having to change the lock because the key and fob were not returned "personally to him". Therefore in the absence of proof to the contrary I accept that the key and fob were returned to the Landlord and the Tenant is therefore entitled to the return of her key fob deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposits, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords were required to return the Tenant's security, pet, and key fob deposits in full or file for dispute resolution no later than October 15, 2011. They did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security and pet deposits.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double the pet and security deposit plus the key fob deposit plus interest in the amount of **\$2,500.00** (2 x \$600.00) + (2 x \$600.00) + (1 x 150.00 + \$0.00 interest).

The Tenant has primarily succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's application will be accompanied by a Monetary Order in the amount of **\$2,550.00** (\$2,500.00 + \$50.00). This Order is legally binding and must be served upon the Landlord.

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: March 27, 2012.

Residential Tenancy Branch