



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

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, her witness and the landlord.

The tenant's original Application sought only return of the security deposit, however with the submission of her evidence the tenant indicated that she also sought compensation for damage or loss. As the landlord was aware of this additional request and was prepared to discuss all these matters I accepted the tenant's amendment.

While the tenant had arranged for two witnesses only one witness was heard from during the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss resulting from a violation of the Act, regulation or tenancy agreement; for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted the tenancy began on September 1, 2011 for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$500.00 paid. The landlord agreed the tenancy began on September 1, 2011 but for a monthly rent of \$750.00 plus \$100.00 utilities per month due on the 1st of each month with a security deposit of \$375.00 and a pet damage deposit of \$375.00 paid.

The tenant submits that she moved her belongings into the rental unit on September 13, 2011 but was staying at her daughter's place providing respite at the same time so her other daughter started unpacking her belongings.

At some point overnight the rental unit was broken into by someone breaking down the door leaving the rental unit unsecured. As a result, while the tenant was still at her

daughters the other daughter stayed at the rental unit and did not leave, she had meals brought to her, so she could ensure the security of the rental unit.

The tenant and her witness testified that they both tried to get a hold of the landlord several times; that when they did reach him he stated he would call right back but he never did and that in addition they left several messages for him.

The tenant submitted that she was trying to have the landlord repair the damaged door so that the rental unit could again be secure. The tenant acknowledged that the landlord had sent his handy man who completed some work to one door but that when he looked at the door that was broken into he stated it was a bigger job and that he wouldn't be able to do it.

The tenant testified that as a result of the landlord's failure to secure the unit she felt she had no choice but to move out of the rental unit. Both parties confirm that they continued to discuss the possibility of laying charges against a suspect they felt had broken in but that those discussions ended. The landlord confirmed the tenant provided him with her forwarding address on November 15, 2012.

The tenant seeks the following compensation:

Description	Amount
Cleaning (at start of tenancy)	\$100.00
Moving expenses	\$200.00
Costs to secure rental unit by having her daughter stay in the unit 24 hours per day for three days	\$750.00
Return of double security deposit and pet damage deposit	\$1,500.00
Total	\$2,550.00

The tenant's original claim only requested \$1,000.00 for return of double the security deposit but based on the landlord's testimony that the tenant paid a pet damage deposit of \$375.00 and a security deposit of \$375.00 I have amended the value claimed.

The landlord confirmed that he had agreed with the tenant that he would reduce rent for the month of October 2011 by \$100.00 if she cleaned the unit. The tenant testified that it had been completely clean but he landlord could not recall the condition after the tenant moved out.

The landlord testified that he did all he could and as quickly as he could to repair the damaged door; that he offered the tenant could stay in a hotel until things were repaired and that had he known the tenant wanted security set up while the repairs were being made he would have arranged a guard.

The tenant moved her belongings out by September 18, 2011 and the landlord testified the door was completely repaired on September 19, 2011. The landlord testified that

until the tenant had removed her belongings he was not aware that she was planning to move out and that she did not give him any notice of her intention to do so.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the agreement the parties had and the landlord's testimony that he could not recall whether the tenant had cleaned the unit or not I find the tenant suffered a loss as a result of the landlord's failure to provide a clean rental unit at the start of the tenancy and I grant the tenant the amount claimed for cleaning.

In relation to the tenant's claim for having someone staying in the rental unit 24 hours a day for 3days, I find the tenant has failed to provide any evidence or testimony to establish a damage or loss that she has suffered or the value of any loss. As such, I dismiss this portion of the tenant's Application.

Section 45 of the *Act* allows a tenant to end a tenancy if a landlord has failed to comply with a material term of a tenancy agreement and has not corrected the situation within a reasonable time after the tenant gives written notice of the failure.

However, in the case before me, while I accept there was a break in and the unit was not secured immediately, I find the landlord's obligations were to make the repairs as quickly as possible. I also accept that there may have been a communication breakdown but I accept the testimony of the landlord that the door was repaired one day after the tenant moved out. I find this to be a reasonable response time, as such I find the landlord has not violated the *Act*, regulation or tenancy agreement. I dismiss this portion of the tenant's Application.

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 and pet damage deposits or file an Application for Dispute Resolution to claim against them. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security and pet damage deposits.

As per the landlord's testimony that he received the tenant's forwarding address by November 15, 2011 in writing I find the landlord had until November 30, 2011 to either file an Application for Dispute Resolution to claim against the security and pet damage deposits or return the deposits in full.

As the landlord has not yet returned the deposits or filed an Application I find the landlord has not complied with Section 38(1) and the tenant is entitled to double the amount of the security deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,650.00** comprised of \$1,500.00 double security and pet damage deposit; \$100.00 cleaning; 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: March 16, 2012.

Residential Tenancy Branch