



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, and a monetary order for compensation for damage or loss under the Act.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on January 13, 2012, a Canada post tracking number was provided as evidence of service, the landlord did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

The tenant's amended Application for Dispute Resolution was sent by registered mail on February 21, 2012, a Canada post tracking number was provided as evidence of service. I find that the landlord has been duly served with the amended application in accordance with the Rules of Procedure.

The tenant appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Is the tenant entitled to the return of double the security and pet deposit?

Is the tenant entitled to compensation under the Act?

Background and Evidence

The tenancy began on July, 15, 2009. Rent in the amount of \$750.00 was payable on the first of each month. A security deposit of \$375.00 was paid by the tenant and a pet deposit of \$200.00 was paid by the tenant. Tenancy ended on May 31, 2010.

The tenant testified the landlord ordered new knobs for the hood of the kitchen stove as the existing knobs were worn and no longer working properly. The tenant stated the local appliance shop called her and told her the knobs have arrived and to come and pick them up. The tenant stated she did go and pick up the knobs, but was surprised when she had to pay for them. The tenant states she presented the landlord with the

invoice, however, the landlord refused to repay her. Filed in evidence is an invoice for \$26.85.

The tenant testified on March 16, 2010 the landlord issued her a two month notice to end tenancy and she accepted the notice for the reason stated in the notice and moved out of the rental unit on May 31, 2010. The notice states that the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The tenant testified that on June 2, 2010, she came across an advertisement in the local paper, which listed the rental unit for rent or sublet. Filed in evidence is a copy of the advertisement. The tenant stated she went by the rental unit and posted on the property was a sign for rent.

The tenant testified that on October 6, 2010, she came across another advertisement in the local paper, which again listed the rental unit for rent or sublet. Filed in evidence is a copy of the advertisement.

The tenant testified the landlord did not have a caretaker, manager or superintendent move into the rental unit when she vacated the rental unit. The tenant states the landlord did not use the property for the reason stated in the notice to end tenancy and is seeking compensation in the amount of \$1,500.00 double the monthly rent (\$750.00) which is the amount allowable under the Act.

That tenant testified that the landlord was provided with her written forwarding address prior to her moving from the rental. After many attempts the landlord has not returned the security deposit or pet deposit paid. On July 11, 2011, the tenant testified that the landlord was again served by registered mail requesting the return of the security deposit and pet deposit. The landlord has not responded and has not returned the security deposit or pet deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The evidence of the tenant was she paid for parts to repair the hood on the kitchen stove.

The Policy Guidelines state: Landlord & Tenant – Responsibility for Residential Premises

MAJOR APPLIANCES - The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

This was an appliance provided under the tenancy agreement, and the original parts were replaced due to normal wear and tear of the appliance. I find the landlord is responsible to pay for the parts required to maintain this appliance. Therefore, the tenant is entitled to compensation in the amount of **\$26.85**.

The evidence of the tenant was the landlord did not use the rental unit for the reason stated in the notice to end tenancy issued on March 16, 2010. The evidence was the landlord posted a for rent sign on the rental property. The documentary evidence filed shows the landlord attempting to re-rent or sublet the unit during the six months period after the effective date of the notice.

Section 51 of the Act states: Tenant's compensation: section 49 notice

51 (2) In addition to the amount payable under subsection (1), if
(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I find the landlord did not use the rental unit for the reason stated in the two month notice to end tenancy issued on March 16, 2010, when the tenant vacated the rental unit. The landlord advertised the rental unit for rent or sublet on two separate occasions during the six month period after tenancy ended. I find the landlord has breach the Act and the tenant is entitled to compensation at double the monthly rent of \$750.00. Therefore, the tenant is entitled to compensation in the amount of **\$1,500.00**.

The evidence of the tenant was she provided the landlord in writing with her forwarding address prior to the tenancy ending and again by registered mail.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit and pet deposit.

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 or pet deposit.

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 and pet 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 they feel they are entitled to it or are 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 or interest.

I must Order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of **\$1,150.00**, comprised of double the pet deposit(\$200.00) and security deposit (\$375.00) on the original amounts held.

Therefore, the tenant is granted a monetary order in the amount of \$2,726.85 comprised of the above amount and the \$50.00 paid by the tenant for filing the application.

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.

Conclusion

The tenant is granted a monetary order in the amount of **\$2,726.85**.

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 02, 2012.

Residential Tenancy Branch