



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and her agent and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant testifies that her boyfriend moved into the rental unit on October 01, 2011 and her boyfriend paid rent for the rental unit. The tenant testifies the landlord did not put the tenants boyfriend on the tenancy agreement but they have made a joint application as they were co-tenants in the rental unit and as the landlord accepted rent from them both the landlord has therefore established a tenancy with the both applicants.

The landlords agent testifies that the tenant only informed the landlord that her boyfriend would be visiting for a few days and sates the tenant was told if the tenants

boyfriend stays at the suite the tenant would be required to pay \$50.00 more to cover the additional utilities used and a new tenancy agreement would need to be drawn up for both tenants. The landlord's agent testifies that they have not established a tenancy for the tenant's boyfriend.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for the return of double the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenancy agreement provided in evidence shows that this tenancy started on October 01, 2010 for a monthly rent of \$550.00. The tenancy ended on January 01, 2012. Both parties also agree that the landlord increased the rent to \$600.00 on October 01, 2011 when the tenant's boyfriend moved into the unit or stayed over at the unit. The tenant paid a security deposit of \$275.00 on October 01, 2010.

The tenant (BT) testifies that she gave the landlord their forwarding address in writing on January 01, 2012. The tenant has provided a copy of this letter in evidence. The tenant testifies that they attended the move in and move out condition inspections with the landlord but did not give the landlord permission to keep all or part of their security deposit. The tenant testifies that the landlord has not returned the security deposit to the tenants within 15 days and the tenants therefore seek to recover double the security deposit to the sum of \$550.00.

The tenant (BT) testifies that she was not informed by the landlord at the start of this tenancy that this was an illegal suite. The tenant testifies the landlord would have known

that this suite was unauthorised accommodation because it is recorded as such on the property description when the landlord purchased the property. The tenant testifies that the City informed the landlord that the suite was illegal and should be decommissioned and the landlord removed the stove from the unit on November 30, 2011. The tenant submits that the landlord told them originally that the stove would be put back again after the city inspector had viewed the suite. The tenant testifies that the stove was not returned to their suite for the duration of the last month of their tenancy. The tenant agrees the landlord brought them a hotplate for their use in the middle of December, 2011 and agreed to reduce their rent by \$50.00. The tenant testifies that this hotplate was not used by the tenant and the tenants seek to recover half a month's rent for the loss of the stove and oven to the sum of \$225.00. The tenant states this figure was calculated on the cost of providing evening meals for a month.

The tenant testifies that the landlord illegally increased the rent from \$550.00 to \$600.00 for October and November, 2011 and did reduce the rent by \$50.00 for some compensation when the stove was removed. The tenant also seeks to recover the \$50.00 filing fee.

The landlord testifies that the tenant's security deposit was withheld due to some damage and cleaning that was not rectified at the end of the tenancy. The landlord has provided photographic evidence of the issues with scuff marks on some walls, damage to a bathroom baseboard heater and damage to a tap. The landlord agrees she has not filed an application to keep the security deposit within 15 days of receiving the tenants forwarding address in writing.

The landlord disputes the tenants claim for compensation for the loss of the stove. The landlord's agent testifies that the tenant was given the option of moving out of the unit because the stove had to be removed as Ordered by the City or using the landlords cooking facilities upstairs in the landlord's kitchen. The landlords agent testifies that she was under the impression that she was able to rent out two suites however after a complaint was made to the bi-law officer she was informed she could only rent one of

her suites. The landlord testifies the stove was removed and placed in her garage and the electrical connection to the stove had to be disconnected. The landlord's agent testifies that the tenant did not want to move from the unit and did not want to use the landlords kitchen so agreed to the landlord reducing her rent by \$50.00 for December, 2011. The landlords agent testifies that at no time did the tenant tell the landlord she was unhappy about this situation and the landlord states she now finds the tenants request for compensation to be unreasonable.

The landlord testifies that the tenants rent did not increase the additional \$50.00 was for the additional utilities used for the extra person staying in the suite.

Analysis

I will first address the issue as to who is the tenant and whether or not both applicants were tenants or if one of the applicants was a roommate of the original tenant. As the parties have contradicted each other's evidence the burden of proof would fall to the tenant to provide corroborating evidence to show that the landlord did establish a tenancy with the tenant's boyfriend by accepting rent from this person. I have no proof to determine if a tenancy has in fact been established between the tenant's boyfriend (the second applicant) and the landlord therefore any Orders issued will be in the name of the original tenant.

With regard to the tenants claim for double the security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing dated January 01, 2012. As a result, the landlord had until January 16, 2012 to return the tenants security deposit or file an application to keep it. I find the landlord did not return the security deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$550.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the tenants claim for compensation for the loss of the stove for one month; the tenant seeks to recover an amount equivalent to half the final month's rent less the \$50.00 the landlord already deducted for this loss. I have considered the evidence before me and refer the parties to s.27 (1)(a) of the *Act* which states

A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation

The landlord argues that the tenant agreed to the rent reduction of \$50.00 for the loss of the stove for the final month of the tenancy, the tenant argues that she did accept this \$50.00 reduction but feels the loss of this facility commands a higher reduction in the rent equivalent to \$225.00. I have considered both arguments in this matter and find the tenant rented this unit with a stove and the stove was removed by the landlord because the city inspector deemed the suite to be unauthorized. Consequently, although it was not the landlord's choice to remove the stove from the suite, it remains the landlord's reasonability to ensure the tenant has the same facilities she enjoyed at the start of her tenancy. The landlord did provide a stove top for the tenant to use however this is not to the same standard as having a stove and a tenant is not required to make use of the landlords cooking facilities in the landlord's kitchen. I therefore find the tenant is entitled to some compensation for the loss of this facility. However, I find the tenants claim is excessive as I have deemed there to be one named tenant residing in the rental unit. I therefore limit the tenants claim in compensation to **\$125.00**.

With regard to the tenants claim to recover the sum of \$100.00 for an illegal rent increase for October and November, 2011; the landlords agent argues that this was an increase for an additional occupant namely the tenants boyfriend to cover the additional utilities used when the tenants boyfriend stayed at the tenants unit. However, s. 40 of the Act states:

In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

I have reviewed the tenancy agreement and find there is no provision for additional occupants in the tenancy agreement between the parties as laid out under s. 13,(2) (iv) of the *Act*. The tenancy agreement must contain a clause that specifies the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies; As the landlord has not included this clause in the tenancy agreement the landlord is not entitled to increase the tenants rent. If a landlord collects a rent increase that does not comply with Part 3 of the Act, the tenant may deduct the increase from rent or otherwise recover the increase. Consequently the tenant is entitled to recover this increase to the sum of **\$100.00**.

As the tenant has been largely successful with her claim I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

Double the security deposit	\$550.00
Compensation for loss of the stove	\$125.00
Recover rent increase	\$100.00
Filing fee	\$50.00
Total amount due to the tenant	\$825.00

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$825.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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 22, 2012.

Residential Tenancy Branch