



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD O

Introduction

This hearing dealt with an application by the tenant for double recovery of the security deposit and further monetary compensation. Both the tenant and the landlord participated in the teleconference hearing.

The landlord acknowledged that she received the tenant's application and evidence. The landlord stated that she faxed evidence to the Residential Tenancy Branch three days prior to the hearing. At the time of the hearing, I had not received the landlord's evidence. The landlord did not serve a copy of her evidence on the tenant. I therefore found that the landlord's documentary evidence was inadmissible. I heard testimony from both parties, and reviewed all 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.

Issue(s) to be Decided

Is the tenant entitled to double recovery of the security deposit?

Is the tenant entitled to further monetary compensation as claimed?

Background and Evidence

The tenancy began on October 1, 2011, with monthly rent in the amount of \$500. At the outset of the tenancy, the tenant paid a security deposit of \$250. The rental unit was a partially finished area in the basement area of the landlord's house. The tenancy ended on December 31, 2011.

Tenant's Claim

There were several problems during the tenancy. The landlord did not give the tenant a copy of the tenancy agreement as required. There was no condition inspection done at the outset of the tenancy. The landlord's boyfriend, who was not a professional plumber,

did some improper plumbing work for the house. The landlord texted the tenant and stated that the new tenant wanted to move into the rental unit on December 27, 2011, even though the tenancy was not ending until December 31, 2011. The new tenant began moving in on December 27, 2011, and some of the tenant's possessions were moved without permission. The tenant gave the landlord her written forwarding address on January 4, 2012, and the landlord acknowledged by text message that she had received the tenant's forwarding address. The landlord did not return the security deposit or make an application to keep the security deposit.

The tenant has claimed the following monetary amounts:

- 1) \$500 for double recovery of her security deposit;
- 2) \$1000 for return of all of her rent for November and December 2011, as the landlord failed to take all proper steps under the *Residential Tenancy Act*; she did not repair and maintain the plumbing to health, safety and housing standards, and the tenant suffered a loss of quiet enjoyment during the tenancy; and
- 3) \$125 for costs associated with the dispute resolution process, including mail costs, notarizing of evidence and photo developing.

The tenant's evidence included notarized copies of text messages between the landlord. In one text message from the landlord to the tenant on December 21, 2011, the landlord asked the tenant "is there any chance you would be moved by the 27th? the girl that's moving in is trying to have a friend help her move that day..." In a subsequent text on December 23, 2011, the landlord wrote, in part, "she is taking the room and I am moving some of her stuff into my storage. I am giving you plenty of advance notice... I have no other alternative but to get the RCMP involved if necessary. I have the legal right to access my storage room and do with it what I see fit."

In a text from the landlord to the tenant on January 4, 2011, the landlord wrote, "Thankyou for confirming your address I do have it on file."

The tenant also submitted photographs of the rental unit. One of the photographs shows an electrical breaker panel in an area that appears to be living space containing a window and furniture.

Landlord's Response

The tenant originally gave her notice on October 31, 2011 that she intended to vacate the rental unit on November 30, 2011. The tenant then requested extra time to move. The new tenant was not moving in on December 27, 2011, she was just passing

through the common area to put some of her things into the storage area, which was not part of the tenant's rental unit.

The landlord returned the tenant's security deposit directly to the Ministry on March 7, 2011.

Analysis

Upon consideration of the evidence, I find as follows.

Security Deposit

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended on December 31, 2011, and the tenant provided her forwarding address in writing on January 4, 2012. The landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. The tenant is therefore entitled to double recovery of the security deposit, in the amount of \$500. The landlord is required to return the security deposit to the tenant, not to the Ministry, and I therefore include the base amount of the security deposit in the monetary order.

Reimbursement of Rent

In regard to the new tenant moving into the rental unit on December 27, 2011, I find that the evidence of the tenant is more credible than that of the landlord on this point. I find that the landlord allow the new tenant to begin moving into the rental unit on December 27, 2011. Further, I find that there was no common area, and that the landlord and the new tenant were entering the tenant's rental unit beginning December 27, 2011. The tenant is therefore entitled to recovery of all of her rent for December 27 to December 31, 2011, in the amount of \$80.65.

I accept the tenant's evidence that the landlord began unreasonably disturbing the tenant on December 21, 2011 in regard to the new tenant moving in on December 27, 2011. I find that the tenant is entitled to nominal compensation for loss of quiet enjoyment from December 21, 2011 through December 26, 2011, in the amount of \$30.

The tenant did not provide sufficient evidence to support her claim for further compensation for other problems during the tenancy. I therefore dismiss that portion of the tenant's claim.

Other Costs

Participants in the dispute resolution process are not normally entitled to recovery of costs incurred in relation to the dispute resolution process. I find that the tenant is not entitled to the amounts claimed for notarizing, mailing and photo developing, and I dismiss those portions of the tenant's claim.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$610.65. This order may be filed in the Small Claims Court and 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: May 8, 2012.

Residential Tenancy Branch