



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

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 advocate; her two witnesses; the landlord; his agent; and one witness. The tenant had arranged for a third witness, however that witness did not provide testimony during the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and for compensation for damage or loss, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on October 1, 2011 as a month to month tenancy for a monthly rent of \$500.00 due on the 1st of each month with a security deposit of \$250.00 paid. The tenant vacated the rental unit on November 29, 2011.

The parties also agreed the landlord was provided with the tenant's forwarding address in February 2012, by way of a letter dated February 17, 2012.

The tenant submitted that beginning on October 5, 2011 the landlord accused her of smoking in the rental unit and that when she told him she did not smoke he began yelling at her that she was lying.

The tenant's first witness testified that she had been there on that occasion and had been smoking outside of the tenant's rental unit with the doors closed and that she witnessed the interaction.

The tenant further submitted the landlord on several occasions confronted the tenant both in person and on the phone regarding smoking in the unit and telling her that she would have to leave if she didn't stop smoking in the unit.

The tenant and her second witness provided testimony that on October 12, 2012 they were trying to enter the unit and found a padlock on the door that she usually used. The tenant went on to say the landlord told her she would have to use the outside entrance to the unit instead of the one through the garage.

The tenant submitted the outside entrance was in the back of the residential property in the yard where the landlord had a pitbull. The tenant testified she did not feel safe for either herself or her baby to be entering the area where the pitbull was kept.

The tenant testified that this behaviour continued through until November 28, 2012 at which time the landlord; his son and wife were yelling and swearing at her; calling her names and telling her that she they wanted her gone. The tenant testified that she moved out the following day.

The tenant and her second witness testified that most of the time during that two month period the tenant stayed with the second witness because she was so upset and she did not feel safe in the unit.

The landlord's agent testified the landlord was simply trying to ensure the tenant knew that smoking was not allowed and that if she or her guests continued to smoke in the unit they would seek to end the tenancy; at no time did the landlord evict the tenant.

The landlord's agent testified that they had to lock the entrance through the garage to protect their property and that the tenant was well aware, at the start of the tenancy, that the entrance to the unit she was to use was the outside one. The landlord went on to say the pitbull was a pup and posed no danger to anyone.

The landlord testified they did not return the security deposit because the tenant had vacated the rental unit with no notice and did not pay rent for December 2011.

Analysis

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 deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the testimony of both parties the landlord received the tenant's forwarding address in writing sometime shortly after February 17, 2012. While the landlord could not confirm the date received I accept that it was likely no later than February 22, 2012 and as such, the landlord had until March 8, 2012 to either return the deposit in full or to file an Application for Dispute Resolution seeking to claim against the deposit.

As the landlord failed to do either I find the landlord has failed to comply with his obligations under Section 38(1) and the tenant is therefore entitled to return of double the amount of the security deposit.

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.

Section 30 of the *Act* states a landlord must not unreasonably restrict access to residential property by the tenant of a rental unit that is part of the residential property or a person permitted on the residential property by that tenant.

In the absence of any evidence that the landlord's dog was dangerous or could even potentially cause harm to the tenant or her child, I find that while the landlord did restrict access to the rental unit to the one entry point the tenant has failed to establish the landlord breached this section of the *Act*.

Section 28 stipulates, among other things, that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance. While I accept the parties had several discussions over the course of the two month tenancy regarding smoking in the unit, the parties dispute the tone of those interactions.

Other than the first occasion the tenant has provided no direct witness testimony or evidence that would corroborate an ongoing harassment or threatening behaviour on the part of the landlord. Further, I note the tenant took no steps to seek an order to have the landlord comply with the *Act* in terms of both Section 28 and 30.

While the tenant testified that as a result of the landlord's tone and actions she felt unsafe and did not want to stay in the unit so did find alternate accommodation for the majority of her tenancy. The tenant did not provide any evidence that she suffered any financial loss over and above the payment of rent to the landlord, as a result of this alternate accommodation.

For the reasons above, I find the tenant has failed to establish she suffered a loss as a result of a violation of the *Act*, regulation or tenancy agreement.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$500.00** comprised of double the amount of the security deposit.

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: June 13, 2012.

Residential Tenancy Branch