



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking a monetary order for money owed or compensation for damage or loss, a monetary order for a return of her security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written 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 a monetary order and to recover the filing fee?

Background and Evidence

This month to month tenancy began on July 10, 2011, ended on March 31, 2012, ending monthly rent was \$550.00 and the tenant paid a security deposit of \$325.00 at the beginning of the tenancy.

The rental unit was a single-room occupancy in the basement suite, with the landlord residing in the upper suite. The tenant shared the basement suite with another tenant when the second bedroom was rented.

The tenant sent evidence which she did not submit to the landlord; I therefore have not accepted the evidence and allowed the tenant to proceed on oral evidence.

The tenant's monetary claim is \$8500.00.

In support of her application the tenant submitted she was entitled to compensation due to the landlord's constant entry into the rental suite, which included the living room and dining area, without the tenant's knowledge or permission, causing a loss of her privacy, mould in the larger bedroom, overpayment in rent, the landlord's failure to return her security deposit and defamation of character.

When questioned, the tenant could not know the exact number of times the landlord entered the suite without permission, but gave undisputed testimony that there were at least 5 times.

The tenant submitted that the loss of her privacy caused great distress as she would never know if the landlord would just appear at will.

The tenant also stated that there was mould growing in the larger bedroom, which is why she moved to the smaller bedroom; additionally the landlord illegally increased her rent \$50.00 for January and February, each.

The tenant stated that she is being falsely accused by the landlord of taking items from the rental unit.

When questioned, the tenant stated she believed that \$8500.00 seemed like adequate compensation.

As to the security deposit issue, the tenant stated that she gave the landlord her forwarding address on March 30, 2012, and did not give the landlord permission to make any deductions from her deposit.

The tenant stated that she was returned a portion of her security deposit, that being \$300.00. The landlord sent a statement that she gave the tenant credit of \$100.00 as a rent refund for January and February 2012, added that amount to the security deposit of \$325.00 and then deducted the amount of \$125.00 for missing items.

In response the landlord agreed that she did deduct \$125.00 prior to returning a portion of the tenant's security deposit.

Further the landlord submitted that it was known to the tenant when she moved in that the landlord would occasionally need to enter the rental suite to remove personal

property, which the landlord did, and on other occasions, the landlord would place some of the tenant's mail on the kitchen table.

The landlord stated that when she received the tenant's emailed request to not enter the rental suite without prior notification, the landlord complied.

The landlord agreed that she received the tenant's forwarding address on March 30, 2012, and has not made an application to claim against the security deposit.

Analysis

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

Security Deposit

The parties agreed that the tenant provided the landlord with her forwarding address on March 30, 2012, via email. I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the evidence. Although section 88 of the Act does not recognize email transmission as an acceptable method of a delivery of documents, section 71 permits that I may make an order that a document not served in compliance was sufficiently served. I therefore order that the delivery of the tenant's forwarding address through the March 30, 2012, email, sufficiently served.

Section 38 of the Residential Tenancy Act requires that 15 days after the latter of the end of tenancy or 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 tenant sent her forwarding address on March 30, 2012, and the landlord did not make an application for dispute resolution. In contravention of the *Act* the landlord made a deduction from the tenant's security deposit without her written consent prior to returning a portion of the security deposit. I have not considered that the landlord included in her calculations the amount of \$100.00 as rent refund.

I therefore find that the tenant has established a monetary claim of \$350.00, comprised of her security deposit of \$325.00, doubled, less the amount the returned by the landlord, \$300.00.

Stress and loss of quiet enjoyment

The Act defines common area as any part of residential property the use of which is shared by tenants, or by a landlord and one or more tenants. The residential property is not part of the rental unit. Therefore the kitchen/bathroom/living room area in the basement suite was a common area for the two tenants in the basement suite to share, but not for the landlords to access.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

On a balance of probabilities and due to the landlord's confirmation, I find the tenant has established that the landlord has interfered with the tenant's right to quiet enjoyment, most particularly her right to privacy, by entering the common area shared by the tenants only.

However, the landlord provided undisputed testimony that she believed she could enter the premises due to the agreement and ceased entering the rental unit without prior permission after receiving the tenant's request. I therefore do not find the breach wilful and ongoing.

I therefore find the tenant is entitled to nominal damages which may be awarded where the burden of proof of a significant loss has not been met, but they are an affirmation that there has been an infraction of a legal right.

I therefore find that tenant has proven a monetary claim for nominal damages in the amount of \$75.00, which is \$15.00 each for 5 unauthorized entries by the landlord.

As to the tenant's claim related to stress, I find the tenant submitted insufficient evidence that the landlord's actions caused her to suffer stress or anxiety, which was detrimental to her mental health. I found no medical records or any other records which documented the tenant's claim.

I find the tenant submitted insufficient evidence to prove her monetary claim of \$8500.00, with the exceptions of \$100.00 in rent overpayment and nominal damages of \$75.00.

As I have found that the tenant is entitled to monetary compensation of \$175.00 for rent overpayment of \$100.00 and nominal damages of \$75.00, I dismiss the balance of the tenant's monetary claim, in the amount of \$8325.00.

As I have found the tenant's application had partial merit, I award the tenant recovery of a portion of her filing fee, in the amount of \$50.00.

Conclusion

I find the tenant has established a total monetary claim of \$575.00, comprised of her security deposit of \$325.00, doubled, less \$300.00 returned by the landlord, rent overpayment of \$100.00, nominal damages of \$75.00 and a partial filing fee of \$50.00.

Pursuant to Section 67 of the Act, I have provided the tenant with a monetary order for \$575.00, which I am enclosing with the tenant's Decision. This order is a legally binding, final order, and may be filed in the Provincial Court (Small Claims) should the landlords fail to comply with this monetary order.

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: July 17, 2012.

Residential Tenancy Branch