



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

A hearing was originally scheduled for June 27, 2012 to hear the tenant's application for a Monetary Order for return of double the security deposit and pet deposit; plus, return of last month's rent. Both parties appeared at that hearing, provided testimony, and made submissions before a different Dispute Resolution Officer. The Dispute Resolution Officer was unable to complete the decision before taking ill and a new hearing was scheduled for July 25, 2012.

On July 25, 2012 the new hearing took place and both parties were in attendance. The parties were informed of the importance of re-submitting any verbal testimony or submissions made on June 27, 2012.

During the new hearing both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the tenant entitled to return of double security deposit and pet deposit?
2. Has the tenant established an entitlement to compensation equivalent to the last month's rent?

Background and Evidence

The tenant moved into the rental unit in December 2010 and paid a \$625.00 security deposit and a \$300.00 pet deposit. The tenant was required to pay rent of \$1,250.00 on the 1st day of the month according to the written tenancy agreement but the parties agreed the tenant would pay a reduced amount \$1,240.00 in recognition of the tenant handling the landlord's mail. The tenant moved out March 31, 2012. The tenant provided her forwarding address to the landlord in writing on April 9, 2012. The tenant did not authorize any deductions from the security deposit or pet deposit. The landlords

had not returned the deposits or filed an Application for Dispute Resolution before the tenant did so on May 2, 2012.

The tenant submitted that a move-in inspection was not done. The landlords submitted that a "walk through" took place at the beginning of the tenancy. It is undisputed that the landlords did not prepare a move-in inspection report.

He tenant is seeking return of double the security deposit and pet deposit due the landlord's failure to return the deposits. The landlords submitted that upon receiving the tenant's forwarding address the male landlord called the tenant that night to discuss the condition of the rental unit. He requested the tenant come back to the rental unit to inspect it with him but the tenant refused. The landlords did not file an AR as they were waiting for the tenant to return to the property to view the damage. The tenant did not deny that she declined to return to the property since the landlord was accusing her of causing over \$3,000.00 in damage.

With respect t the tenant's request for return of last month's rent she submitted that she was given an improper notice to end tenancy twice by the landlords: the first time on December 1, 2011 and the second time on January 27, 2012 via email. Further, since the landlords subsequently moved into the rental unit she should receive the same compensation given to tenants who receive a Notice to End Tenancy for Landlord's Use of Property.

The landlords submitted that they did not want to end the tenancy in order to move into e rental unit. Rather, the landlords were of e position they were ending he tenancy due to the tenant's breach of the tenancy agreement; such as: failure to maintain the property; permitting someone live in an RV on the property ad breeding dogs. After putting the tenant on notice December 1, 2011 the parties agreed the tenancy would continue if the tenant took care of these issues. When an inspection in January 2012 revealed the tenant was still in breach the landlords' sent the email of January 27, 2012.

The tenant acknowledged that she did not request proper notice or look into her right to receive proper notice or file an Application for Dispute Resolution seeking resolution. The tenant explained that she chose to accept that the tenancy would end and she would move out because he was tired of conflict with the landlords.

The landlords submitted that they moved in to the property after the tenant moved out after unsuccessful attempts to re-rent the unit and because the unit was not left in a condition fit to be re-rented. The landlord provided a copy of an advertisement showing an attempt to attract prospective tenants for the unit.

The tenant was of the position the landlords moved in because the female landlord lost her job. The landlords denied this to be the case.

Analysis

As the parties were informed during the hearing, damage to the property was not an issue for me to decide under this application since the landlords have not filed an Application for Dispute Resolution. The purpose of this hearing is to determine whether the landlords complied with the Act with respect to the administering the security deposit and pet deposit. The landlords remain at liberty to make a separate application for damages.

By failing to prepare and provide a move-in inspection report the landlords extinguished their right to make a claim against the deposits for damage. Although the tenant may have extinguished her right to the deposits by refusing to participate in a move-out inspection, Residential Tenancy Policy guideline 17 provides that where both parties extinguish their right, the party that extinguishes their right first suffers the consequences of extinguishment. In this case, the landlords extinguished their right to claim against the security deposit and pet deposit first.

Having lost the right to make a claim against the security deposit and pet deposit, the landlords were required to comply with section 38(1) of the Act by either returning the security deposit and pet deposit to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit and pet deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

Based upon the undisputed evidence that the tenant's forwarding address was received in writing on April 9, 2012 I find the landlords failed to comply with section 38(1) as they held onto the deposits without the authority to do so and must not pay the tenant double the security deposit and pet deposit pursuant to section 38(6). I award the tenant \$1,850.00 as claimed by the tenant.

With respect to the recovery of last month's rent I find the tenant has not established an entitlement to such compensation. The equivalent of one month's rent is given to tenants who are in receipt of a 2 Month Notice to End Tenancy for Landlord's Use of

Property. The tenant did not receive such notice and after hearing from the parties I am not satisfied the landlords were trying to avoid the Act or paying compensation for landlord's use of property by giving the emailed notice that they did. Rather, upon consideration of the evidence before me, I am satisfied the tenancy relationship had significantly deteriorated and that both parties wanted the tenancy to end for their own reasons. Therefore, I dismiss the tenant's request for return of last month's rent or the equivalent of one month's rent.

In light of the above, the tenant is provided with a Monetary Order in the amount of \$1,850.00 to serve upon the landlords. The tenant may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was partially successful in this application and has been provided a Monetary Order in the amount of \$1,850.00 for return of double the security deposit and pet deposit. The remainder of the tenant's claim was dismissed.

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: August 03, 2012.

Residential Tenancy Branch