



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications by the parties for dispute resolution.

The tenant filed on September 17, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of double the security deposit (\$1250) - Section 38
2. A monetary order for loss / loss of quiet enjoyment (\$1250) – Section 67
3. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given a full opportunity to present relevant evidence and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord was aided by counsel.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant testimony is as follows. The tenancy began on September 25, 2011. Rent in the amount of \$1250.00 was payable in advance on the first day of each month. The tenant vacated August 31, 2012 pursuant to a mutual agreement to end the tenancy at day's end of the same date. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$625.00. The landlord did not conduct move in or move out inspection in accordance with the Act. The landlord returned the full security deposit in October 2012.

The tenant claims that on August 31, 2012 they made an oral arrangement with the son of the landlord to obtain their security deposit at the son's place of employment. The tenant claims they subsequently received the original security deposit in mid October 2012 to the mailing address provided to the landlord within their Application for Dispute Resolution. They seek double the original deposit as per provisions of Section 38 of the Act.

The tenant also alleges that on the last day of their tenancy – amidst moving – the landlord arrived at the dispute address at 6:00 p.m. and parked their recreational vehicle in the driveway. In the 2 hours following, the tenant claims the male landlord threatened and swore at the male tenant and made him fearful of the landlord (“placed me in a state of fear”) – using wording such as; “I can make you disappear”, and “I know people”. The tenant called Police whom arrived and spoke to the tenant. The female tenant confirmed the landlord was threatening toward the male tenant. The male landlord denies using profanity or threatening anyone. The female landlord confirmed that the male landlord did not threaten anyone. The male landlord called his son, whom upon arrival spoke to both parties. The testimony of the tenant and the landlord confirmed that the presence of the son and the Police resulted in the landlord moving their recreational vehicle, and the tenant completing their move out from the rental unit by 8:00 p.m. The tenant claims that the landlord's conduct during the episode of that evening was a breach of the *tenant's right to quiet enjoyment*, and seeks compensation in the amount equivalent to one month's rent. The tenant testified that they determined the claimed amount was reasonable punishment for the landlord's breach. The landlord testified that on the evening of August 31, 2012 they indeed entered into a “heated discussion” with the tenant, but they did not threaten the tenant, and that the intervention of Police did not result in further action. The landlord testified that they think the tenant's claim is unjustified and excessive.

Analysis

On the preponderance of the evidence and sworn testimony of the parties, I find the tenant's claim for return of double the original security deposit is not supported by evidence that the tenant provided the landlord with a written forwarding address as required by Section 38(1) of the Act. I find that the doubling provisions of the Act do not apply in this matter. The evidence is that the tenant has already received the original amount of their deposit. Therefore, **I dismiss** the tenant's claim for this portion of their application, without leave to reapply.

In regards to the tenant's claim for compensation for loss of quiet enjoyment, I find the tenant has not provided sufficient evidence to fully support their claims. However, I am satisfied that the subject exchange between the parties on the evening of August 31,

2012 was of sufficient substance and concern to the tenant that they requested Police to intervene. On this basis and on balance of probabilities I find I prefer the tenant's claim that their right to quiet enjoyment was breached for the later 2 hours of their tenancy. I grant the tenant compensation in the limited amount of **\$50.00** without leave to reapply. As the tenant was partly successful in their claim, I grant the tenant recovery of their filing fee of **\$50.00**, for a sum award of **\$100.00**.

Conclusion

I grant the tenant an Order under Section 67 of the Act for the amount of **\$100.00**. If necessary, 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: December 10, 2012

Residential Tenancy Branch