



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OLC PSF LRE RR FF SS DRI O

Preliminary Issues

At the outset of this proceeding the Tenant advised that she had vacated the property by February 10, 2013 and left the rental unit keys with her neighbour. Accordingly, the Tenant's requests to dispute a rent increase, for other reasons, to have the Landlord comply with the Act, regulation or tenancy agreement, provide services or facilities required by law, to suspend or set conditions on the landlord's right to enter the rental unit, allow the tenant reduced rent for repairs, and services or facilities agreed upon but not provided are now moot as this tenancy has ended. I proceeded to hear the remaining matters pertaining to the Tenant's claim for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for the return of her security deposit.

The Landlord requested an adjournment of today's hearing because the Regional Manager could not attend and because they had submitted late evidence regarding a police file. Upon consideration of the Landlord's request I found that the Landlord was well represented at the hearing and the late evidence could be provided orally; therefore, I declined to adjourn the hearing, in accordance with rule # 6.6 of the *Residential Tenancy Branch Rules of Procedure*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 15, 2013, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of her security deposit, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: 35 photos of the rental unit; her letter dated January 27, 2013 ending her tenancy effective March 1, 2013; a January 12, 2012 letter from the Landlord advising that they had purchased the building; numerous notices issued by the Landlord for maintenance upgrades and entry of the rental unit; January 29, 2012 letter issued to the Tenant providing instructions for moving out; copies of the front and back of the Tenant's rent cheques.

Upon review of the Tenant's evidence the Landlord stated that they did not receive copies of the front and backs of the cashed rent cheques. The Tenant initially affirmed that she sent the Landlord the same documents as the *Residential Tenancy Branch*, except for her drivers' license; the Tenant changed her testimony and confirmed she had not sent the Landlord copies of the aforementioned cheques.

The Landlord submitted 44 pages of documentary evidence which included, among other things, copies of: notices and letters issued to the Tenant; the tenancy agreement between the Tenant and original landlord, memos and incident reports. The Landlord stated that the evidence was sent to the Tenant by registered mail in two separate packages. They confirmed during the hearing that Canada Post attempted delivery and left notices for the Tenant on February 5th and 11, 2013.

The Tenant submitted that she did not receive the Landlord's evidence. She initially confirmed living at the rental unit and receiving mail until February 10, 2013 and later recanted her testimony to say she was not receiving mail at the rental unit address as she changed her mail at the beginning of February 2013.

The parties agreed that the Tenant entered into a month to month tenancy with the previous landlord that began on June 1, 2009. Rent was payable on the first of each month in the amount of \$750.00 and on May 31, 2009 the Tenant paid \$375.00 as the security deposit. No move in condition inspection report form was completed with the previous landlord. On September 12, 2012, the existing Landlord informed the Tenant, in writing, that they had purchased the building and would be the new Landlord.

The Tenant stated that she had vacated the unit by February 10, 2013 and had left the keys with her neighbor who used to be the resident manager for her previous landlord. She confirmed that prior to this hearing she did not inform the Landlord that she had vacated early and did not inform the Landlord that she had left the keys with her neighbor.

Upon further clarification the Tenant submitted that the Landlord had posted a notice of entry to inspect her unit on February 8, 2013 between 9:00 a.m. and 2:00 p.m. She stated that she had already vacated and cleaned the unit by February 8, 2013 and was staying at a hotel. She said she attended the unit at 7:30 a.m. on February 8, 2013 and unlocked her door to allow the Landlord entry and then returned that same day at 5:00 p.m. to lock it again.

The Tenant advised that she provided the Landlord with her notice to end her tenancy on January 27, 2013, after being forced into signing a contract to pay for parking at the rental unit and after being badgered and harassed with notices posted to her door. She noted that in one month she had had six (6) notices posted to her door and several entries into her apartment for repairs. She had been charged for three months of parking, at \$25.00 per month, and after complaining, two of the charges were reversed.

The Tenant stated that the Landlord attempted to cash her February 1, 2013 rent cheque on January 30, 2013 which caused her cheque to be returned NSF. When that happened she decided she would not pay the February 1, 2013 rent and would move out, as she expected the Landlord would serve her a 10 Day eviction notice for nonpayment of rent. She confirmed she was not served with an eviction notice.

The Tenant acknowledged that the Landlord was not breaking the law by posting the notices on her door and around the building. She stated that they "were invading my privacy too much" and after attending the Landlord's office on January 9, 2013, she decided she would move out and would no longer speak with her Landlord.

The Landlord submitted that their Agent saw the Tenant moving some possessions out of her unit; however, the Tenant had not contacted them to arrange the move out inspection, as requested, or to turn the keys back in. They had received her notice to end tenancy effective February 28, 2013, so expected not to regain possession until the end of the month.

The Landlords confirmed that they had changed the parking arrangements and that effective December 2012 the Tenant would be required to pay \$25.00 per month for parking and would be required to sign a parking agreement. They acknowledged that there was no charge for parking with the previous landlord. The Tenant was originally charged \$75.00 for three months of parking (December 2012, January 2013, and February 2013) but they reversed December and January charges. The Tenant paid \$25.00 for February 2013.

The Landlord confirmed receipt of the Tenant's notice to end tenancy on January 27, 2013. They advised the Tenant that her notice would be effective February 28, 2013. On January 29, 2013 they posted a letter confirming receipt of her notice and instructions on how the Tenant was to contact the Landlord for the move out inspection and what needed to be done to the unit for cleaning. They had attempted to contact the Tenant on several occasions; however, whenever they called the Tenant would hang up on them. When they attended in person the Tenant refused to open the door or to speak

with them. Their last contact with the Tenant was when she was in their office on January 9, 2013.

The Landlord advised that on February 6, 2013 they received a courtesy call from the police advising them that the Tenant told them that the Landlord refused to provide them with a key to lock out the elevator. They explained the situation with the Tenant refusing to speak with them so they asked the police to tell the Tenant to call them. The Landlord clarified that all tenants must request or schedule the elevator to be locked out and the Landlord would make arrangements to lock it out. The Landlord does not provide the elevator key to tenants; rather they attend the building to lock and unlock the elevator.

In closing, the Tenant advised that she completed the monetary order worksheet seeking monetary compensation on the advice of the *Residential Tenancy Branch* staff. She confirmed that she had refused to speak or communicate with the Landlord since January 9, 2013.

I explained to the Tenant that she has not returned possession of the rental unit to the Landlord, in accordance with the Act, and I gave her opportunity during this proceeding to schedule a date and time for the move out inspection. I advised the Tenant that she could have an agent attend the move out inspection on her behalf. She declined to attend a move out inspection. She stated that she did not want anyone to attend the move out inspection on her behalf, she did not want any future communication or contact with the Landlord, and the Landlord could keep her security deposit.

The Tenant provided the Landlord with her neighbor's name and telephone number during the hearing and requested that the Landlord contact that neighbor to make arrangements to pick up the keys for her rental unit.

Analysis

The Tenant confirmed that she did not provide the Landlord with copies of both sides of the rent cheques which were submitted to the *Residential Tenancy Branch* in her evidence. Based on the foregoing I find service of the Tenant's evidence not to be in accordance with section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlord has not received copies of the Tenant's cheques I find that the evidence not served upon the Landlord cannot be considered in my decision. I did however consider the Tenant's testimony.

The Landlord's evidence was served upon the Tenant in accordance with the *Residential Tenancy Act*; however the Tenant neglected to pick up her registered mail. The Tenant confirmed that she refused contact from the Landlord from January 9, 2013

onward. Given the circumstances before me, I find the Tenant was sufficiently served with the Landlord's documentary evidence and her refusal to pick up the registered mail does not negate service. Accordingly, I considered all of the Landlord's evidence.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In this case the evidence supports that the Tenant vacated the property prior to February 28, 2013, without informing the Landlord of her early departure and without returning the keys to the Landlord. Accordingly, I find that this tenancy ended effective today, **February 12, 2013**, in accordance with section 44(1)(d) of the Act. I make this finding in part because this is the first time that the Landlord was informed that the Tenant has fully vacated the unit and how they could retrieve the keys.

The Tenant confirmed that at the time she filed her application for dispute resolution on January 15, 2013 she had not ended her tenancy. During the course of this proceeding the Tenant refused to attend a move out inspection and stated that the Landlord could keep her security deposit. Accordingly, the Tenant's request for the return of her security deposit is hereby dismissed, without leave to reapply.

The Tenant has sought financial compensation in the amount of \$22,750.00 for what she refers to as harassment, discrimination, denial of her right to refuse to provide a copy of her identification, refund parking charges, and for the costs of her move. That being said, the Tenant confirmed that the Landlord has not breached the *Residential Tenancy Act* or regulation.

After careful consideration of the above I find the Landlord breached the tenancy agreement by demanding the Tenant sign a parking agreement and begin paying \$25.00 a month for parking. The Tenant was initially charged for three months parking; however, two months were reversed and she paid a total of \$25.00. Accordingly, I award the Tenant reimbursement of the one month parking fee in the amount of **\$25.00**.

With respect to the remaining claim of \$22,725.00, I find there to be insufficient evidence to meet the burden of proof as the Landlord has not breached the *Residential*

Tenancy Act or regulation. Furthermore, I find that although the Tenant filed her application for dispute resolution to seek a remedy she did not follow through with mitigating her losses as she decided to simply cut off all communication with her Landlord and made the conscious decision to end her tenancy. Therefore, the remainder of the Tenant's claim is dismissed, without leave to reapply.

The Tenant has only been partially successful with her claim; therefore, I reward her partial recovery of her filing fee in the amount of **\$10.00**.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$35.00** (\$25.00 + \$10.00). This Order is legally binding and must be served upon the Landlord.

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: February 12, 2013

Residential Tenancy Branch

