



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 seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and his agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for hydro charges; loss of income; moving expenses; double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on October 1, 2012 as a month to month tenancy for the monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid. The tenancy ended when the tenants vacated the rental unit on or before November 7, 2012.

The landlord provided a copy of a letter from the landlord's legal counsel to the tenant dated January 15, 2013, which states they are returning the tenant's deposit less hydro and gas charges owing. The tenant provided a copy of a letter dated December 29, 2012 providing the landlord with her forwarding address and agreeing that the landlord could deduct 1/3 of the hydro bill. The parties agreed during the hearing that the landlord was entitled to \$100.00 for hydro and gas.

The tenant further submits that despite the statement in the letter from the landlord's legal counsel a cheque or money was not provided to the tenants and she contacted the landlord's legal counsel and advised her of such on January 23, 2013. The landlord testified that they had full intention of providing the tenant with her security deposit once they had received her forwarding address and it was an oversight to not include in the letter.

The tenant submits that the landlord failed to inform her that he had a dangerous dog; that the dog attempted to attack the tenant's daughter and that the landlord failed to make suitable security precautions to prevent the dog having access to her family and that as a result the tenants found it difficult to enter the unit due to fear of the dog.

The tenant submits that the day after they moved into the rental unit the landlord's dog was barking and charged at the tenant's child who was strapped into a stroller but that her husband was able to fend the dog off by using the stroller after unbuckling their daughter.

The tenant submits she reported this to the landlord's wife who had a piece of plywood placed to block the dogs access to the tenant's entry, however this plywood was not secured. She goes on to say that she then advised the landlord that this was not sufficient and the tenant purchase a gate that she offered to install but the landlord advised her that he would take care of it.

When nothing had been completed by October 9, 2013 the tenant called the landlord and gave him 30 days notice that they would be vacating the rental unit. The parties agree that on October 13, 2012 gates were installed. The tenant submits, however, that this still does not allow her to have her daughter play in the backyard because they had no way of knowing when the dog will be in the yard.

The tenant submits that had she known what type of dog the landlord had she never would have rented the unit and the because the landlord told her that the dog was never let outside she did not pursue the matter further. The tenant submits that as a result she suffered additional costs to move out of the rental unit and seeks compensation in the amount of \$322.00 for moving costs and \$329.00 for loss of income for the days she took off from work to move out of the rental unit.

Analysis

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 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.

I accept the tenant provided the landlord with her forwarding address by letter dated December 29, 2012 by mail. In accordance with Section 90 of the *Act* the letter is deemed to be received by the landlord 5 days later. As such, I find the landlord had until January 18, 2013 to return the tenant's security deposit.

Despite the landlord's intentions, I find the landlord has failed to provide the tenant with any of the security deposit and as such I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit pursuant to Section 38(6). However, as the parties agreed, during the hearing, that the utility charges amounted to \$100.00 I deduct this amount from the double amount.

In relation to the tenant's claim for compensation for moving costs and lost income, I find that prior to entering into a tenancy agreement both parties must be satisfied that the tenancy will meet their own specific requirements.

Despite the tenant's testimony that she was not concerned about the dog when she had been told that it was never let outside, I find a reasonable person would know that dogs, in general, need to leave a home, at the very least, to deal with their normal bodily functions. As such, a reasonable person should consider that at some point an opportunity would exist that the person might encounter the dog outside of the home.

Therefore, I find it was essential on the part of the tenant to take all reasonable due diligence to determine if the dog the landlord owned could in anyway be a dog that the tenant would not want around her or her family, prior to entering into a tenancy agreement.

Further, I find that when the tenant determined the landlord's dog was dangerous and that she and her daughter's life may be in danger if they ran into the dog she did not take steps to inform authorities of such a dangerous dog.

While I accept the tenant's testimony that she contacted 911 several hours after the second encounter and that she was informed that it was not appropriate to call 911 so late after the event, she did not, from her own testimony, contact any other authority. She testified that she did not know who to contact, but she did not make attempts to find out.

In addition, I find, while it did take the landlord a couple of weeks to install gates to the property, the landlord did take reasonable steps to correct a problem that may have been a material term of the tenancy.

For the reasons noted above, I find the tenant has failed to provide any evidence that the landlord has violated the *Act*, regulation or Tenancy agreement. As such, I find the tenant has failed to provide sufficient evidence to support her claim for compensation and I dismiss this portion of her Application.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$825.00** comprised of \$900.00 double the security deposit and \$25.00 of the \$50.00 fee paid by the tenant for this application, as she was only partially successful less the \$100.00 charge for utilities..

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: February 14, 2013

Residential Tenancy Branch