



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double her security deposit and a cross-application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

At the outset of the hearing, the tenant voiced her objection that she was the sole respondent listed in the landlord's application as there were 2 other co-tenants listed on the tenancy agreement. I advised the tenant at that time that co-tenants are jointly and severally liable and therefore the landlord has the choice of acting against one or all.

Issues to be Decided

Is the tenant entitled to double her security deposit?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2008, at which time the tenant paid a \$725.00 security deposit, and ended on December 7, 2012. They further agreed that the tenant provided her forwarding address in writing to the landlord on December 9, 2012. They further agreed that the tenant paid just one half of the rent that was due in December. The tenant testified that although the tenancy agreement stated that rent was \$1,450.00 per month, it was reduced during the tenancy and at the end of the tenancy, she had been paying just \$1,250.00 per month for the past 2 years. The landlord did not disagree with this statement.

The tenant seeks an order for the return of double her security deposit as the landlord did not file his claim against the deposit until February 28, 2013.

The landlord testified that the tenant gave him written notice in mid-November that she would be vacating the unit on December 15, 2012. The landlord immediately advised her that she could not end the tenancy mid-month. Shortly thereafter, the landlord contacted the tenant and advised that he intended to bring people to look at the property. The tenant testified that she told the landlord that he could bring prospective tenants in November only if he accepted her notice to be effective on December 15. Otherwise, he would have to wait until December to show the rental unit. The landlord testified that he agreed to this proposal only because he was concerned that the tenant would not give him access to the unit.

The tenant claimed that the landlord told her that if the prospective tenants who wished to view the unit agreed to enter into a tenancy agreement, he would only require one half month's rent for December irrespective of when the new tenancy would begin. The landlord did not agree that he had made this representation. The landlord testified that the new tenancy began in January 2013.

The landlord testified that at the end of the tenancy there was a significant stain in the carpet of the landing and the stairs. He gave evidence that he spent \$179.90 in an effort to remove the stain and eventually had to replace the carpet. The landlord stated that the carpet was approximately 3 years old at the start of the tenancy.

The tenant acknowledged that there was a stain in the carpet, but claimed that it developed as a result of a flood which had occurred during the tenancy.

The landlord seeks to recover unpaid rent for the last half of December, the cost of carpet cleaning and the cost of replacing the carpet.

Both parties seek recovery of the filing fees paid to bring their respective applications.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the end of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the security deposit in full or file a claim to retain the deposit. This obligation is placed upon the landlord regardless of whether he feels he has a legitimate claim against the deposit. In this case, the landlord neither filed a claim within 15 days nor returned the deposit to the tenant and I find that the landlord wrongfully withheld the deposit.

Section 38(6) provides that a landlord who withholds monies from a deposit in contravention of section 38(1) is liable to pay the tenant double the amount of the deposit.

The landlord currently holds a \$725.00 security deposit and I find that the tenant is entitled to recover double that amount pursuant to section 38(6). I award the tenant \$1,450.00. I further find that she is entitled to the \$5.47 in interest which has accrued and I award her that sum bringing her total award to \$1,455.47.

Section 45 of the Act provides that to end a periodic tenancy, a tenant is required to give one full month notice no later than the day before the day the last rental payment is due. Because the tenant's rent was due on the first day of the month, any notice given in the month of November cannot have been effective to end the tenancy on December 15.

The landlord disputed that he told the tenant that she would not be responsible for the full month's rent if a new tenancy began at any time after December 15 and in the absence of evidence to corroborate the tenant's claim that this conversation took place, I find that the landlord did not make that representation.

I do not accept that the tenant is excused from paying the full month's rent because the landlord showed the rental unit in the month of November. When a landlord receives a notice to end a tenancy, he is entitled to begin seeking new tenants immediately. The tenant attempted to take advantage of the landlord's speed in trying to re-rent the unit and I find that the mere fact that he showed the unit to prospective tenants in the month of November does not indicate his agreement to relieve the tenant of her obligation to pay rent in December. I find that because the tenant threatened to deny him access, any agreement he made with respect to allowing the tenant to leave in December was made because the tenant was making unreasonable demands and threatening to deprive him of his legal right.

I find that the tenant is liable for rent for the last half of December. As the tenant was paying \$1,250.00 per month in the last year of the tenancy, I find that the landlord is entitled to \$625.00 and I award him that sum.

Residential Tenancy Policy Guideline #1 provides that in a tenancy of over 1 year, tenants are required to shampoo the carpet. This tenancy lasted for 4 years and I find that the tenant was obligated to shampoo the carpet. The tenant did not provide any evidence showing that she performed this cleaning and therefore I find that the landlord is entitled to recover the cost of carpet cleaning. I award the landlord \$179.90.

I dismiss the claim for the cost of replacing the carpet. The landlord did not provide evidence showing the extent of the stain which prevents me from determining whether replacement was required. Further, the landlord's testimony regarding the age of the carpet leads me to believe that the carpet was near the end of its useful life in any event.

As both parties have enjoyed some success in their respective claims, I find that each should bear the cost of their own filing fee.

Conclusion

The tenant has been awarded \$1,455.47 and the landlord has been awarded \$804.90. Setting off these claims as against each other leaves a balance of \$650.57 payable by the landlord to the tenant and I therefore grant the tenant a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial 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: March 28, 2013

Residential Tenancy Branch

