



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RR FF

Introduction

This hearing dealt with an application by the tenant for monetary compensation for damage or loss under the Act, regulation or tenancy agreement. The tenant also indicated in her amended application that she was seeking double recovery of her security deposit. Both the tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to double recovery of her security deposit?
Is the tenant entitled to further monetary compensation as claimed?

Background and Evidence

Undisputed Facts

The tenancy began on May 1, 2011, with monthly rent of \$1100 due in advance on the first day of each month. At the outset of the tenancy, the landlord received from the tenant a security deposit of \$500. The rental unit is one of four rental units in a house. The landlord did not carry out a move-in condition inspection with the tenant at the outset of the tenancy.

The tenancy ended on February 2, 2013. The landlord did not carry out a move-out inspection with the tenant at the end of the tenancy. The tenant gave the landlord her

forwarding address in writing on February 15, 2013. The landlord did not return the security deposit or make an application to keep the security deposit.

Tenant's Evidence

The tenant stated that she and her young daughter moved into the rental unit with the understanding that the landlord planned to move families into the other apartments in the building. In November 2012, the tenant received information that the landlord was planning to convert the building into a recovery house for drug addicts. The tenant submitted photographs showing several metal bunk beds that were in the yard. The tenant wrote a letter to the landlord requesting that he clarify his intentions with the building, but the landlord did not respond. The tenant submitted that by converting the building to a recovery house, the landlord changed the terms of the tenancy agreement and ought to have given the tenant a two-month notice to end tenancy. The tenant moved out of the rental unit because she did not see a recovery house as a suitable place to raise her daughter. The tenant has claimed \$2200, the equivalent of two months' rent, for the landlord's failure to properly serve the tenant with a two month notice to end tenancy, as well as \$1100 for moving costs. The tenant based the amount for moving costs on the costs of her previous move. The tenant has also claimed \$1000 for double recovery of her security deposit, pursuant to section 38 of the Act.

The tenant stated that at the outset of the tenancy the landlord promised the tenant he would get laundry facilities in her rental unit. The tenant had access to shared coin laundry facilities in the other building, but she stated that she would not use those facilities because they were in poor condition and the machines did not always work. The landlord allowed the tenant to use the laundry in one of the other rental units, which was unoccupied, but once the tenant started complaining to the landlord about problems with the rental unit, he shut off the water to the laundry in the unoccupied unit. On Friday, November 30, 2012, the power in the tenant's kitchen went out. The tenant stated that she tried to contact the landlord, but he was not available. The power was not restored until the morning of Monday, December 3, 2012. The tenant had to take her daughter out to eat for the entire weekend. For the lost access to laundry and the three days without power in the kitchen, the tenant has claimed \$225 in compensation.

The tenant has also claimed \$2000 for loss of quiet enjoyment throughout the tenancy. The tenant stated that the landlord never kept the common areas clean; things such as the stair railings were never repaired properly; there were bunk beds in the yard; the landlord was turning the house into a recovery house; and the tenant did not have power or water at times. The tenant submitted photographs and video evidence to show the dirty common areas, the items left in the yard, and the loose stair railings. The

tenant submitted that the landlord was aware of the required repairs since the outset of the tenancy, and she reminded the landlord of those issues in her letter dated December 12, 2012.

Landlord's Response

In regard to the end of the tenancy, the landlord stated that he never made representations that he was running a family-oriented house, and the neighbourhood is low-income. The landlord also stated that the tenant's allegations that he was converting the building to a drug recovery house are unsubstantiated. The landlord was carrying out renovations and considering options regarding the property. The landlord acknowledged receiving the tenant's written forwarding address, but the landlord did not return the security deposit because the tenant did not give the landlord written notice of her intention to vacate until January 8, 2013. The landlord further stated that the tenant had shown the landlord a complete lack of decorum and respect, and was verbally abusive.

In regard to the laundry and power issues, the landlord stated that he allowed the tenant to temporarily use the laundry in the unoccupied unit, until renovations required that the water be shut off in that unit. The tenant was aware that the shared laundry facilities in the adjacent building would be available for her use. The landlord stated that he received the tenant's message about the power outage in her kitchen, and on that date he sent his agent to flip the breaker. The landlord submitted a written statement from his agent, in which the agent indicated that the power in the rental unit kitchen was only out for two hours.

Analysis

Security Deposit

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended on February 2, 2103, and the tenant provided her forwarding address in writing on February 15, 2013. The landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving

the tenant's forwarding address in writing. I therefore find that the tenant has established a claim for double recovery of the security deposit, in the amount of \$1000.

Remainder of Tenant's Application

Upon consideration of the evidence, I find that the tenant is not entitled to the remainder of her monetary claim.

When the tenant discovered that the landlord appeared to be converting the building to a recovery house, she made the choice to move out rather than wait for the landlord to serve her with a two-month notice to end tenancy or make a written complaint to the landlord about any problems she may have had about the new tenants in the building. The tenant was not entitled under her tenancy agreement to access to the laundry in the unoccupied suite, so she did not suffer any loss under her tenancy agreement when the water for those laundry facilities was turned off. The tenant did not provide sufficient evidence to show that her power was cut off for three days at the end of November and beginning of December 2012. The tenant's letter to the landlord on December 12, 2012 made reference to repairs, but the tenant did not make any written request for those repairs previously, and she did not clearly outline in her letter which repairs she was now requesting. A landlord is not obligated to carry out repairs if he is not aware that repairs are required, and the remedy for a tenant when a landlord does not carry out a written request for repairs is to apply for an order for repairs. The tenant did not provided evidence how the unclean common areas negatively affected her quiet enjoyment of her rental unit. For these reasons, I dismiss the remainder of the tenant's application.

Filing Fee

As the tenant's application was only partly successful, I find she is not entitled to recovery of her filing fee for the cost of her application.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$1000. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the tenant's application is 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: April 11, 2013

Residential Tenancy Branch

