



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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant gave undisputed sworn testimony that this tenancy ended on the basis of an oral notice to end this tenancy by November 30, 2012 that she provided to the landlord(s) at the beginning of November 2012. The landlords' agent (the agent) did not dispute the tenant's sworn testimony that she handed both landlords copies of her dispute resolution hearing package on January 23, 2013. I am satisfied that the tenant served the hearing package to the landlords in accordance with the *Act*.

The agent testified that the landlords did not provide a copy of their written or photographic evidence to the tenant in advance of this hearing. I advised the parties that I would not be considering the landlords' written or photographic evidence as they had made no attempt to serve this evidence to the tenant.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This periodic tenancy commenced on November 15, 2011. Monthly rent was set at \$900.00, initially payable in advance on the first. The agent testified that during the course of the tenancy, the parties agreed to allow the tenant to pay her rent in two payments on the 5th and 20th of each month. The landlords continue to hold the tenant's \$450.00 security deposit paid on or about November 15, 2011.

The tenant gave undisputed sworn testimony that she moved out of the rental unit by November 21, 2012, but her daughter and her daughter's male friend remained in the rental unit until November 28, 2012. She testified that her daughter returned the keys to Landlord TS on November 28, 2012, and advised her that she would remove some personal possessions left under a tarp on the premises (e.g., two boxes of household items; a truck canopy; a box of shoes, etc.) shortly thereafter. She also testified that her daughter told her that the landlord (TS) told her that it was alright to leave a couch and coffee table in the rental unit as the next tenants might like these items.

The tenant testified that she did not provide the landlords with her forwarding address until she returned from another community on January 4, 2013. At that time, she spoke first with Landlord GH, the owner of the property, who referred her to her daughter, Landlord TS. The tenant testified that she visited Landlord TS at her workplace on January 4, 2013 or January 5, 2013, was told that she was busy, and referred the tenant to the landlord's agent. She said that the agent told her that the landlords had incurred costs in removing items from the rental unit and had receipts for these costs. The tenant testified that she agreed at that time to let them reduce her security deposit by the amount of the costs they had incurred if she agreed with their receipts for these costs which she requested from the agent. She said that she never received these receipts and one of the landlords got progressively more angry in dealing with her with respect to the tenant's request to obtain a return of her security deposit. The tenant was uncertain if she provided a copy of her forwarding address in writing, although she said that she did provide this address orally to Landlord TS and perhaps in an email.

The agent testified that no move-in condition inspection was conducted for this tenancy. He said that arrangements were made with the tenant (or her daughter) to conduct a joint move-out condition inspection on November 20 or 21, 2012, but the tenant's daughter was unavailable for that inspection. He said that the tenant's daughter never did return the keys to the rental unit to the landlords. He said that he conducted an inspection of the rental unit on December 1, 2012, and completed an inspection report. However, he testified that he has not provided a copy of that report to either the tenant or the Residential Tenancy Branch for this hearing. The agent testified that the landlords did not have the tenant's forwarding address until they received a copy of the

tenant's dispute resolution hearing package. Even then, he said that the tenant did not provide the landlords with her mailing address, as the address identified in the tenant's application for dispute resolution is not a proper mailing address.

The tenant provided no written or photographic evidence. The landlords' only written and photographic evidence could not be considered because the landlords had made no attempt to serve this evidence to the tenant. At the hearing, I noted that the landlords' written and photographic evidence had little bearing on the tenant's application for a monetary award.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address in writing. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the tenant has not demonstrated that she provided the landlords with her forwarding address in writing in advance of her application for dispute resolution. Since her application for dispute resolution identified her actual address, one where she admitted mail could not be properly received, the tenant did not provide the landlords with a forwarding address in writing where they could return her security deposit. However, based on the sworn testimony of the agent, it appears that the reason for the landlords' retention of the tenant's security deposit was because the landlords believed that they had a valid claim to that deposit and not because the landlords did not have the tenant's forwarding address. The agent gave no indication at the hearing that the landlords attempted to return any portion of the tenant's security deposit after her return to the community on January 4, 2013, or after the tenant applied for dispute resolution to obtain a return of her security deposit.

Based on the evidence before me, I find that the tenant is entitled to obtain the recovery of her security deposit plus applicable interest as the landlords have not established their entitlement to retain any portion of that deposit. No interest is payable over this period. I find that the tenant is not entitled to a monetary award equivalent to double her

security deposit pursuant to section 38(6) of the *Act*, as there is insufficient evidence that she submitted her forwarding address in writing to the landlord. While I issue a monetary award in the tenant's favour in the amount of \$450.00, this award does not prevent the landlords from submitting their own application if they believe that they are entitled to a monetary award for damage or losses arising out of this tenancy.

I find that the tenant has not provided sufficient evidence to demonstrate any entitlement to a monetary award for items allegedly retained or discarded by the landlords at the end of this tenancy. The tenant's evidence in this regard was vague and did not identify specifics as to the value of any items allegedly lost at the end of this tenancy. The tenant testified that her daughter and male friend left items under a tarp that they could not take with them at the end of this tenancy, by which time she claimed that they returned the keys to the rental unit to the landlords. I am not satisfied that items that were left behind at the end of this tenancy had value or that the landlords are responsible for reimbursing the tenant for these items. I dismiss the tenant's application for a monetary award for lost personal property without leave to reapply.

I dismiss the tenant's application to recover her filing fee from the landlords without leave to reapply. I do so as the tenant did not provide her forwarding address in writing to the landlords. I am not satisfied that the tenant had to incur the costs of filing an application for dispute resolution in order to obtain a return of her security deposit.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$450.00 to recover her original security deposit. The tenant is provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 15, 2013

Residential Tenancy Branch