



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pham & Doan Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD

Introduction

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

The landlord acknowledged having received the tenant's claim and evidence and stated that he had not submitted any evidence.

At the hearing, the landlord asked for an adjournment to permit him time to file a claim against the tenant. I denied the request for an adjournment as the landlord had received notice of the claim against him in early March and had been given more than 2 months to file his own claim. The landlord is free to file a claim which can be addressed in a separate hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to the return of her security deposit?

Background and Evidence

The parties agreed that the tenancy began on October 23, 2012 at which time the tenant paid a \$392.50 security deposit. They further agreed that while the tenant is the sole tenant listed on the tenancy agreement, she never resided in the rental unit and that her daughter, X.M.O., was the occupant of the unit. The parties further agreed that on December 30, 2012, there was a sewage backup in the rental unit. Neither party alleged that the other was at fault for this incident.

The tenant testified that when the sewage backup occurred, a number of X.M.O.'s Christmas gifts were destroyed. The tenant testified that upon learning of the incident,

she drove to the rental unit and assisted X.M.O. in moving her belongings so they would not be damaged and cleaning those items which had been affected.

The parties agreed that at the time of the incident, the landlord had offered to pay \$30.00 as the cost of laundering clothes. At the hearing, although the tenant had claimed \$60.00 as the cost of doing laundry, they agreed that the landlord would pay \$30.00.

The tenant testified that X.M.O. and the landlord had a conversation in which they agreed that the tenancy would end and that the landlord allowed her to move her belongings into another apartment. X.M.O. told the tenant that the landlord had told her that she could not stay in the other apartment, but could merely store her belongings there short term. The landlord testified that he told X.M.O. that she could live in the other apartment for the month of January, but warned her that he was trying to rent that apartment, so it would be shown to prospective tenants while she was there. The parties agreed that the tenant paid rent for the month of January.

The tenant seeks to recover the value of the gifts which were destroyed and compensation for the time she spent cleaning as well as fuel costs incurred when traveling back and forth from her home to the rental unit. The landlord also seeks to recover the rent paid for January and her security deposit.

The parties agreed that the landlord received the tenant's forwarding address on or about January 27, 2013.

Analysis

Section 7 of the Act provides that when a landlord does not comply with the Act, regulations or the tenancy agreement, the non-complying landlord must compensate the tenant for any damage that results from that non-compliance.

In order to succeed in her claim to recover the value of the gifts which were destroyed by the sewage backup and compensation for the time and fuel expended to address that issue, the tenant must prove that the landlord did not comply with the Act, regulations or the tenancy agreement. Landlords are not held responsible for all losses which occur in a rental unit during a tenancy. Rather, they are held responsible for only those losses which result from their failure to comply with their legal obligations.

The tenant did not allege that the landlord caused or contributed to the sewage backup and I find that she has not met her burden of proof as she offered no evidence that the

landlord had failed to comply with his legal obligations. I therefore dismiss the claims for the value of the gifts and the time and gas expended to clean.

The tenant provided hearsay evidence about a conversation between the landlord and X.M.O. Hearsay evidence is evidence which is obtained indirectly rather than from personal knowledge. The tenant did not claim that she was present when the discussion took place and in her testimony she relied on the information given to her by X.M.O. The tenant did not call X.M.O. as a witness and the landlord, who was directly involved in that conversation, disputed this evidence. Because the landlord had direct knowledge of that conversation whereas the tenant did not, I prefer the evidence of the landlord over that of the tenant.

I find that the landlord gave X.M.O. access to another apartment in the building as alternate accommodation because the rental unit was uninhabitable and I find that the landlord did not tell X.M.O. that she could not reside in the other apartment. Because X.M.O. moved her belongings into that apartment, I find that she agreed to rent that apartment in substitute for the rental unit and therefore I find that the tenant is not entitled to recover rent paid for January as X.M.O. was using the other apartment. I dismiss the claim for recovery of January's rent.

Section 38(1) of the Act provides that when tenancy has ended and the landlord has received the tenant's forwarding address in writing, the landlord has 15 days to either make a claim against the security deposit or return it in full. The parties agreed that by the end of January, the tenant both provided her forwarding address in writing and X.M.O. had completely removed her belongings from both the rental unit and the alternate apartment. I find that the landlord failed to return the security deposit or file a claim against it within 15 days.

Section 38(6) provides that when a landlord fails to deal with the deposit within 15 days, he is liable for double the amount of the deposit.

The tenant does not appear to have made a claim for double the deposit. However, Residential Tenancy Policy Guideline #17 provides that unless the tenant specifically waives the doubling of the security deposit, the Arbitrator will award double the deposit.

Pursuant to section 38(6) and the aforementioned Policy Guideline, I find that the tenant is entitled to an award of double her security deposit and I award her \$785.00.

As the parties agreed that the landlord will pay \$30.00 to the tenant to cover the cost of laundry, I award the tenant \$30.00.

The tenant has been awarded a total of \$815.00 and I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is awarded \$815.00 which represents double her security deposit and the agreed upon amount for laundry. The balance of her claim is dismissed without leave to reapply.

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: May 24, 2013

Residential Tenancy Branch