



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This was a reconvened hearing for 9 a.m. on this date by way of a conference call in response to an Application for Dispute Resolution made by the tenant for a monetary order relating to money owed or compensation for damage or loss under the Act, a monetary order for the return of all or part of the pet damage or security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant filed this application and served the landlords with a copy of the application and Notice of Hearing by registered mail. No issues of service were raised during the hearing.

The tenant and an agent of the landlords attended the hearing to give affirmed testimony and both parties provided evidence in advance of the hearing. All of the testimony and documentary evidence submitted was carefully considered in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to the return of double the amount of the security deposit?
- Is the tenant entitled to costs relating to losses incurred under the Act?

Background and Evidence

Both parties agreed that the tenancy started on January 31, 2012 on a month-to-month basis and ultimately ended with the tenant leaving on August 31, 2012. Rent in the amount of \$500.00 was payable on the 1st day of each month and the landlord collected a security deposit from the tenant in the amount of \$250.00 on January 31, 2012.

The tenant testified that during the month of July 2012, she became aware that the landlord was entering the rental unit without her permission. As a result the tenant used a laptop camera to record the multiple entries by the landlord into the rental unit. The camera was motion activated and a DVD was provided as evidence showing the landlord entering the suite on multiple occasions to turn off lights and ceiling fans, look around the unit and examine opened mail.

The tenant testified that the landlord had entered the unit a total of twelve times during the course of July and August, 2012. On each occasion, the tenant states that her privacy was breached and there was a loss of quiet enjoyment. The tenant now seeks to recover two months lost rent in the amount of \$1,000.00.

The tenant also testified that as a result of this breach, the tenant could no longer bear to reside in the rental unit knowing that these entries were being made by the landlord and could not address the issue with the landlord due to the difficult situation. As a result the tenant provided a note to the landlord stating that due to an invasion of privacy the rental unit was being vacated and personally paid the landlord the August 2013 rent. The tenant testified that \$250.00 in cash was paid to a friend to help with labor and truck rental costs and seeks to now recover this from the landlord.

The tenant testified that she provided the landlord with a forwarding address in her evidence package which she served to the landlord by registered mail on April 24, 2013. The tenant now seeks to recover double the amount as the landlord failed to return it.

The landlord's agent acknowledged that evidence for this hearing had been sent to the tenant at the address provided in the tenant's evidence package and that the evidence package had been received on May 3, 2013 by the landlord.

The landlord's agent testified that the tenant rented out a two bedroom suite with a verbal agreement that one of the bedrooms would be used by the landlord for storage of the landlord's personal property. The verbal agreement also included the ability of the landlord to enter the suite at any time to obtain items from the second bedroom. The landlord's agent further testified that the tenant, on multiple occasions, left the lights and bathroom ceiling fans on which created a noise disturbance and the landlord experienced an increase in the utility costs which the landlord was responsible for.

The landlord's agent also testified that entry was only being gained into the unit to switch of the lights and bathroom fans and to gain access to the second bedroom for their personal property as per the verbal agreement. The landlord's agent explained that the tenant had made no attempt to address this issue with the landlord, either verbally

or in writing, choosing to let the issues go on for two months before deciding to terminate the tenancy without proper notice.

In response, the tenant testified that a verbal agreement was reached with the landlord to enter the rental unit but this could only be gained by the landlord giving the required legal notice and for the purpose of accessing the second bedroom only and not going through personal mail and looking around the suite.

Analysis

Section 38(1) of the *Residential Tenancy Act* states that, within 15 days of the landlord receiving the tenant's forwarding address in writing after the tenancy ends, the landlord must repay the security deposit or make an application to claim against it.

The landlord's agent acknowledged that the forwarding address had been provided by the tenant in the evidence package which was received by the landlord on May 3, 2013 by registered mail. The landlord testified that subsequent evidence submitted to the tenant was served to this forwarding address. As a result, I find that the landlord received the tenant's forwarding address in writing, on May 3, 2013. Therefore, the landlord was required to take the above action in relation to the security deposit by May 18, 2013.

Section 38(6) of the *Act* states, if a landlord does not comply with the above they must pay the tenant double the amount of the security deposit. Therefore, the tenant is entitled to the return of double the amount of the security deposit totaling \$500.00.

In relation to the remainder of the tenant's claim for compensation of two months rent of \$1,000.00 and \$250.00 for moving costs, I make the following determination. Section 29 of the *Act* talks about the circumstances in which a landlord can enter the rental unit. One of these reasons requires the tenant's permission at the time of entry. The landlord and tenant provided conflicting testimony about whether permission had been granted. However, in the absence of any documentary evidence, such as a 24 hour written notice given by the landlord to enter the premises and the landlord not being able to meet any of the criteria of entry under Section 29 of the *Act*, I find that the landlord breached this part of the *Act*.

Section 7(2) of the *Act* talks about the duty of a landlord or tenant who makes a claim for compensation for damage or loss from the other's non compliance with the *Act*, to mitigate losses. The tenant acknowledges that the first breach occurred at the start of July, 2012. However, when the breach came to the attention of the tenant, I find that the

tenant failed to mitigate loss by addressing this with the landlord either verbally or in writing. Instead, the tenant chose to let the violation continue for two months and chose to end the tenancy of her own volition without seeking remedy with the landlord or bringing an application against the landlord for this reason. The tenant testified that she could not approach the landlord because it was a difficult situation. However, the tenant had the option of writing a letter to the landlord explaining this. In addition the tenant personally handed over August, 2012 rent to the landlord, and during this time, again, failed to make mention of the illegal entries being made by the landlord.

As a result, I am satisfied that the landlord breached the *Act* on twelve separate occasions and therefore I award the tenant twelve days worth of rent as compensation in the amount of \$193.55. As the tenant did not comply with Section 7(2) in mitigating the losses, I dismiss the remainder of the monetary claim. I also award the tenant the \$50.00 filing fee for the cost of this application. As a result, the total amount awarded to the tenant is \$743.55.

The landlord made mention that the tenant had not provided proper written notice to end the tenancy and left damages to the rental unit. However, the landlord did not bring an application before me to claim these costs. The landlord is however, at liberty to make a claim for these costs.

Conclusion

For the reasons set out above, I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$743.55. This order must be served on the landlord and then may be filed in the Small Claims 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: June 21, 2013

Residential Tenancy Branch