



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and CNR

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent, for the return of her security deposit, and for a monetary Order for money owed or compensation for damage or loss. At the outset of the hearing the Tenant withdrew the application to cancel the Notice to End Tenancy, as the rental unit has been vacated.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch. With the assistance of the Interpreter, the Landlord stated that copies of these documents were posted on the door of the rental unit on June 25, 2013 and June 27, 2013. The Tenant stated that she did not receive any evidence from the Landlord.

With the assistance of the Interpreter, the Landlord declined the opportunity for an adjournment for the purposes of re-serving the Landlord's evidence. The parties were advised that documents the Landlord wishes to rely upon as evidence can be discussed at the hearing and that an adjournment will be granted if the Tenant feels it necessary to view a particular document.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence, with the exception of one letter dated June 07, 2013. With the exception of the letter written by the Tenant, dated June 07, 2013, the Tenant's documents were accepted as evidence. The Tenant testified regarding the information in the letter dated June 07, 2013 and there was no need for the Landlord to physically view this letter.

Issue(s) to be Decided

Is the Tenant entitled to a rent refund; to compensation for moving costs; and to the return of her security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on January 03, 2013; that the Tenant paid a security deposit of \$450.00; and that the Tenant agreed to pay monthly rent of \$625.00.

The Landlord and the Tenant agree that on May 15, 2013 a bylaw officer informed the Landlord and the Tenant that the rental unit is an illegal suite and that the Landlord was given until August 01, 2013 to have the unit vacated. The parties agree that as a result of the directive of the bylaw officer the Landlord served the Tenant with a One Month Notice to End Tenancy that required her to vacate the rental unit by July 01, 2013. With the assistance of the Interpreter, the Landlord stated that he did not know the rental unit was an illegal suite until May 15, 2013

The Landlord and the Tenant agree that the Tenant had vacated the rental unit by July 01, 2013 and that the Tenant has not yet provided the Landlord with a forwarding address, in writing.

The Tenant is seeking a rent refund for the period between January 03, 2013 and May 31, 2013. She argued that she should not have to pay rent for this period because the rental unit was not a legal suite.

The Tenant is seeking compensation, in the amount of \$750.00, for rent she paid at her new home for July of 2013. The Landlord and the Tenant agree that the Tenant has not paid rent for June or July for this rental unit.

The Tenant is seeking compensation, in the amount of \$357.00, for hydro expenses she understands she will incur at her new home.

The Tenant is seeking compensation, in the amount of \$375.00, for the damage deposit she paid at her new home.

The Tenant is seeking compensation for costs directly related to moving, including \$500.00 for renting a trailer from a friend, \$40.50 for boxes/tape, and \$20.00 for a connection fee charged by her television provider. The Tenant submitted no receipts or documentary evidence to corroborate her testimony that these expenses were incurred.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. As the Tenant has not yet provided the Landlord with a forwarding address, in writing, I find that the Landlord is not yet obligated to return the security deposit. I therefore dismiss the Tenant's claim for the return of her security deposit. The Tenant retains the right to file another Application for Dispute Resolution for the return of her security deposit once she has provided the Landlord with a forwarding address in writing.

Section 26 of the *Act* stipulates that a tenant must pay rent when it is due whether or not the landlord complies with the *Act* or the tenancy agreement. There is nothing in the *Act* that suggests a tenant does not have to pay rent if the rental unit does not comply with local zoning bylaws. Regardless of whether or not the rental unit complied with local zoning bylaws, I find that the Tenant was able to occupy the rental unit between January 03, 2013 and May 31, 2013 and I therefore find that she was obligated to pay rent for those months. I therefore dismiss the Tenant's application for a rent refund for any portion of that period.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant only if the tenant suffers a loss as a result of the landlord not complying with the *Act* or the tenancy agreement. I find that the Tenant is not entitled to compensation for rent she paid at her new home for July of 2013 or for any hydro expenses she might incur at her new home.

I find that the Tenant would have had to pay rent of \$675.00 for this rental unit if this tenancy had continued and I therefore find that \$675.00 of the rent she paid at her new home cannot be considered a loss. Although the Tenant paid an additional \$75.00 in rent at her new home for July of 2013 and may incur hydro expenses that exceed the hydro expenses at this rental unit, I cannot consider this to be a loss as there is no evidence to show that the value of her new accommodations is equal to the value of this rental unit. In the event she is paying increased rent/hydro for better accommodations, I cannot conclude she suffered a loss as she received a "product" of greater value. I therefore dismiss the Tenant's application for one month's rent and hydro costs at her new home.

I find that the damage deposit of \$375.00 that the Tenant paid at her new home is a refundable deposit that must be returned to the Tenant at the end of that tenancy, assuming the Tenant provides the Landlord with a forwarding address and she does not owe money to the Landlord at the end of the tenancy. As this is a refundable deposit, I cannot conclude that it is a loss suffered by the Tenant. I therefore dismiss the Tenant's application for the damage deposit she paid at her new home.

On the basis of the undisputed evidence, I find that this tenancy ended because the

rental unit did not comply with local zoning bylaws. I find that the Landlord should not have entered into a tenancy agreement with the Tenant without ensuring that the rental unit complied with local zoning bylaws. I find that the Tenant incurred moving related costs as a result of the Landlord's decision to offer this unit for rent when it could not be legally occupied by a tenant. I find that the Landlord's actions are a breach of the Tenant's right to the quiet enjoyment of her rental unit.

In addition to establishing that the Tenant suffered a loss as a result of the Landlord breaching her right to quiet enjoyment, the Tenant must also accurately establish the cost of remedying the loss. In these circumstances, I find that the Tenant failed to establish the true cost of moving out of the rental unit. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Tenant's testimony that she paid a friend \$500.00 to rent his/her trailer, that she paid \$40.50 to purchase boxes and tape, and that her television provider charged her a connection fee of \$20.00. As the Tenant has failed to establish that she incurred these costs, I dismiss the Tenant's claim for compensation for these moving expenses.

Conclusion

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: July 18, 2013

Residential Tenancy Branch