



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 all or a portion of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlords 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, to call relevant witnesses and to cross-examine one another.

After discussion with the parties, I agreed to hear sworn testimony from three of the four witnesses they wished to have participate in this hearing. The male landlord (the landlord) said that the landlords were not disputing the tenant's claim that the landlords' children did use their trampoline for the period of time when the tenant's mother was present at the rental unit during their move-out process. The tenant agreed that her mother had no additional direct evidence to offer with respect to the principal issues in contention. As it did not appear that the tenant's mother had any additional direct testimony to provide at this hearing, I advised the parties that I saw no need to include her as a witness in these proceedings.

Preliminary Matters - Service of Documents

The landlords confirmed that they received copies of the tenant's dispute resolution hearing package sent by the tenant by registered mail on July 11, 2013. I am satisfied that the tenant served this package to the landlords in accordance with the *Act*.

The landlords confirmed that they received a copy of the tenant's initial written evidence package. The landlord testified that he sent the tenant a copy of the landlords' written,

photographic and digital evidence package by courier on August 14, 2013. The tenant confirmed that she received the landlords' package on August 16, 2013, one week before this hearing. She said that she had reviewed this package and that she had been able to access the landlords' digital evidence. The above-noted documents and evidence were served to one another in accordance with the *Act*. I have considered this evidence in reaching my decision.

The tenant testified that she had not sent the landlords copies of two recent written evidence packages, received by the Residential Tenancy Branch (the RTB) on August 20, 2013, after the deadline for providing evidence had expired. As the tenant has not served this evidence to the landlords, I advised her that I could not consider this evidence.

Issues(s) to be Decided

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

Background and Evidence

The tenant signed a Residential Tenancy Agreement (the Agreement) for a periodic tenancy with the landlords on May 30, 2013 to take occupancy on July 1, 2013. The landlords entered undisputed written evidence that they agreed to let the tenant and her husband (the co-tenant) commence moving their possessions into this basement rental suite on June 29, 2013. The tenant did not dispute the landlords' written evidence stating that the tenants completed moving into the rental unit on July 1, 2013. The landlords and their children live upstairs from the basement rental unit.

Monthly rent was set at \$900.00, payable in advance on the first of each month. The tenant paid the first monthly rent cheque for July 2013. The landlords continue to hold the \$450.00 security deposit paid on May 30, 2013.

After staying in this rental unit for three days and after sending a series of emails registering concerns about various features of this tenancy, the tenant sent the landlords an email advising them that they planned to move out of the rental unit on the weekend of July 6th to 7th. They provided the landlord with a written notice to confirm their intention to end this tenancy immediately on July 7th. They vacated the premises that day.

In their written notice to end this tenancy, the tenant and co-tenant maintained that the landlords had violated their right to quiet enjoyment of the premises to such an extent that the landlords had breached their Agreement with them. In that letter, they maintained that there was excessive noise until late hours at night. They also noted that the ongoing "noise and conflict", much of it involving the landlords' young children, had caused the tenants to take steps to relocate their pets and that they only stayed overnight "in the suite for half of the week." Their letter noted that the female tenant was pregnant and unable to get necessary rest and that the male tenant was "commuting and driving very tired to work on 4-5 hours of sleep." They described the landlords' children as "screaming, fighting, swearing, banging and pounding." Although the tenant admitted at the hearing that there was no mention of the tenants having exclusive use of the private yard for the use of their dogs, the tenants asserted in their letter that the landlords had breached their agreement to allow them "private yard use for the dog." The tenants' letter also cited noise complaints regarding the use of a trampoline in the yard by the landlords' children, which the tenants maintained breached their right to quiet enjoyment of the premises.

In the tenants' letter, the tenants agreed to pay only the prorated amount of rent for that portion of July when they resided in the rental unit. In the letter, the tenants asked for a refund of \$696.75 in their July rent and a return of their security deposit from the landlord.

The tenants' application for a monetary Order of \$1,680.00, included a request for the return of their security deposit, a rebate of that portion of their July 2013 rent, as noted above, moving costs, and a recovery of their filing fee for their application.

The landlords entered written evidence that the male landlord was working long hours during the few days of this tenancy and the female landlord's mother was looking after their young children that week. The female landlord was vacationing that week out of town after having received a gift vacation from one of the landlords' adult children. The landlords maintained that the level of noise that week was not unusual and that some of the noise may have come from a school playground and basketball court at the back of their yard. Although the female landlord's mother gave sworn testimony that the children were using the trampoline that week, she said that they used it in the afternoon and for no more than two or three hours each day.

In written evidence and in sworn oral testimony, the tenant identified many other deficiencies in this tenancy, which she maintained justified the tenant's departure from this basement suite after staying there less than a week. These included but were in no way limited to the following:

- an assertion that marijuana could be smelled throughout the property;
- the landlords' alleged failure to remove the dog feces from the landlords' dogs from the back yard;
- a claim that the landlords' smoked in the landlords' portion of this home, contrary to their claim that this was a smoke-free home;
- concerns about a lack of provision of a parking space to the tenants in the driveway;
- a claim that the landlords did not provide access to cable television as was stated in their Agreement; and
- a claim that other nearby neighbours advised the tenant that two previous sets of tenants vacated the same basement suite due to noise concerns very soon after their tenancies began.

Analysis – Return of Security Deposit

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, 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. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage 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, the landlord testified that the landlords received the tenant's forwarding address on July 7, 2013, the same date as this tenancy ended. I find that the landlords have not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address and the end of this tenancy. There is no record that the landlords applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The landlord confirmed that the landlords have not obtained the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit. The landlord said that he was waiting until this hearing to return the security deposit to the tenants.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only. No interest is payable over this period.

As the tenant has been successful in this application, I allow her to recover her filing fee from the landlords.

Analysis – Application for a Monetary Award for Losses or Damages

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the landlords' written evidence and in the landlord's sworn oral testimony, the landlords submitted that the tenant and her spouse had second thoughts about leaving their previous more secluded rental accommodations shortly after moving into the landlords' basement suite. Based on the evidence before me and on a balance of probabilities, I find that there is validity to the landlords' assertion that the tenants precipitously ended their tenancy after staying there for a few nights. The male landlord was working long hours that week without the assistance of his spouse who normally looked after their children. The female landlord's elderly mother was caring for the children that week; the only week of this tenancy. I find that the pattern of emails entered into written evidence by both parties demonstrated that they were both finding the first few days of this tenancy difficult. The landlord sent an email advising the tenant that his wife would have to look after the tenants' concerns when she returned on Friday of the first week in July. In an escalating and more demanding set of emails from the tenant to the landlord, the tenant advised that she could not wait until his wife's return to remedy the problems that she was having with this tenancy.

Although I have given the tenant's numerous concerns careful consideration, I do not view the issues that she has raised with this tenancy as sufficient to justify her claim that the landlords' failure to immediately remedy her concerns to her satisfaction and within the first few days of this tenancy constituted a breach of their signed Agreement. The rapid escalation of the tenant's demands and the multiple additional concerns that she continued to raise over the first few days of this periodic tenancy lend support to the landlords' claim that the tenant was seeking any way possible to extricate herself from a

tenancy which she and her husband no longer wished to continue. Other than her sworn oral testimony, the tenant provided very little evidence that oral agreements she claims to have obtained, all of which were disputed by the landlords, were in fact in place for such items as parking, exclusive use of the yard, and smoking concerns. Other than the brief time frame when her witness was present helping the tenants move into the rental unit, she presented little other than her own testimony to support her claim that the premises were so noisy that they could not continue with their tenancy. She provided no evidence other than her own sworn testimony as to the alleged presence of marijuana in the landlords' home above her. I find the reasons she added over time, most if not all of which I find had very little corroboration by anyone else, lend support to the landlords' claim that the tenant simply regretted having left her previous accommodations, accommodations the tenants returned to after they vacated the landlords' rental suite.

I do not find that the tenant gave the landlords an adequate opportunity to address the concerns that the tenants had about this tenancy before the tenants opted to end their tenancy. The landlords' current tenant who moved into the same basement suite in August 2013 testified that she has not found the noise level excessive and is quite satisfied with her tenancy and the landlords. While the tenants may have found the tenancy unsuitable for their needs, this does not enable them to arbitrarily and precipitously end their Agreement without providing proper notice to the landlords.

For the reasons stated above, I dismiss the tenants' application for a monetary award for losses and damages they incurred as a result of this tenancy without leave to reapply. In so doing, I note that had the landlords been unable to find a new tenant and, in this way mitigate the tenants' losses, the landlords could very well have been successful in an application to obtain an additional month's rent from the tenants for August 2013, due to what I find was the tenants' flagrant contravention of the Agreement and the *Act*.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover her original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*.

Item	Amount
Return of Security Deposit	\$450.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	450.00
Filing Fee	50.00
Total Monetary Order	\$950.00

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.

I dismiss the tenant's claim for a monetary award for losses and damages arising out of this tenancy 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: August 26, 2013

Residential Tenancy Branch

