



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a tenant's amended application for return of double the security deposit; and, monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced February 1, 2013 and the tenant paid a security deposit of \$400.00. The tenant was required to pay rent in the amount of \$800.00 for a fixed term set to expire July 31, 2013. According to the tenancy agreement, at the end of the fixed term "the tenancy may continue on a month-to month basis or another fixed length of time."

The parties provided undisputed testimony that on July 18, 2013 the tenant gave the landlord notice to end the tenancy at the end of August 2013 and provided her forwarding address.

The tenant's rent cheque for August 2013 was returned because the tenant had put a "stop payment" on the cheque. The tenant replaced the returned cheque and the landlord required the tenant pay an additional \$100.00 which the tenant did. The

\$100.00 payment was comprised of a \$50.00 late payment fee and a \$50.00 returned cheque fee.

On August 8, 2013 the tenant provided her forwarding address to the landlord again on a document entitled "moving notice". The "moving notice" indicates the tenant would be vacating the rental unit August 10, 2013. The tenant removed her possessions from the unit August 9, 2013 and placed a type of "do not enter" sticker on the door of the rental unit. The parties agreed to meet at the rental unit on August 13, 2013 for purposes of inspecting the unit and returning the keys to the landlord. On August 13, 2013 the landlord provided the tenant with a document, in Korean, when translated indicates there was "no problems" with the rental unit and two keys were returned.

On August 28, 2013 the landlord sent the tenant a partial refund of the security deposit in the amount of \$12.77 along with a letter of explanation to the tenant's forwarding address. The letter accompanying the refund cheque indicates the landlord deducted \$219.45 for cleaning the carpet and the unit; \$120.00 for garbage disposal; and, \$47.78 for gas and hydro.

The tenant was agreeable to compensating the landlord \$47.78 for utilities but did not agree or authorize the landlord to make deductions for cleaning or garbage disposal. Therefore, the tenant is seeking return of double the sum of: the security deposit, less utilities and the partial refund, calculated as $[(\$400.00 - \$47.78 - \$12.77) \times 2] = \678.90 .

The landlord wished to present evidence and submissions with respect to the deductions made for cleaning and garbage removal; however, the landlord has not yet filed an Application for Dispute Resolution and since the tenant was not in agreement with those deductions I did not hear from the parties further on such matters. Rather, the landlords remain at liberty to file their own Application for Dispute Resolution in order to claim losses for cleaning and garbage disposal.

The tenant was also claiming return of the \$100.00 she paid to the landlord for the returned cheque for August 2013. The landlord pointed to the addendum to the tenancy agreement as the basis for charging the tenant such fees.

Finally, the tenant was seeking return of the rent she paid for August 2013. The reason for the tenant's request for return of the August 2013 is two-fold. Firstly, the tenant submitted that she was harassed by the landlord by way of yelling, excessive noise and intimidation tactics on part of the landlord. The tenant asserted the landlord blamed her when her fridge stopped working. As well, the tenant's ability to access the WiFi was

terminated and access to garbage and laundry facilities were restricted as of August 8, 2013.

Secondly, the tenant is of the position that the landlord had told her to move out by the end of July 2013 and she acted upon those statements. The tenant explained that the landlord attempted to increase the rent to \$850.00 by requesting she enter into a new tenancy agreement for that amount. When the tenant did not agree to increasing the rent the landlord began telling the tenant she had to move out by the end of the fixed term (July 31, 2013) so the tenant gave the landlord verbal notice that she would move out at the end of July 2013. On July 18, 2013 the tenant secured a new place to live starting on August 1, 2013 and the tenant notified the landlord of this on July 18, 2013. When the tenant informed the landlord that she was moving out at the end of July 2013 the landlord became angry and told the tenant she had to stay until the end of August 2013.

In response, the landlord acknowledged that there was an argument between the parties regarding a document the landlord had provided for purposes of the tenant's son entering Canada. However, the landlord denied harassing the tenant, blaming her for the fridge, or restricting her access to the garbage and laundry facilities. The landlord acknowledged changing the password for the landlord's WiFi signal but explained that WiFi was not included in rent as evidenced by the tenancy agreement.

The landlord acknowledged that in June 2013 the landlord approached the tenant about "renewing" the tenancy agreement after the fixed term expired to increase the rent to \$850.00. The landlord submitted that the tenant initially indicated she would agree with renewal of the tenancy agreement at the higher rate but on July 18, 2013 the tenant notified the landlord that she had changed her mind and found another place to live. Since the tenant was giving notice to end the tenancy in July 2013 the landlord informed the tenant the effective date of the end of tenancy would be the end of August 2013. The landlord submitted that since the parties did not renew the existing tenancy agreement the terms of the existing tenancy agreement remained in place, as evidenced by payment of the \$800.00 in rent for the month of August 2013.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each of the tenant's claims.

Double security deposit

As the parties were informed during the hearing, the landlords' claims for cleaning and garbage removal were not issues for me to decide as the landlords had not made an Application for Dispute Resolution. The purpose of this hearing was to hear the tenant's Application and determine whether the landlords complied with the Act with respect to handling of the security deposit. The landlords remain at liberty to make a separate Application for damages or loss.

Section 38 of the Act provides for the return of security deposits. Deductions may not be taken from a security deposit unless the landlord has the tenant's written consent to do so or the prior authorization of an Arbitrator. Without authorization to make deductions from a security deposit, the landlord is required to either return the security deposit to the tenant or make an Application for Dispute Resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord fails to comply with the above requirements, section 38(6) requires that the landlord must pay the tenant double the security deposit.

It is undisputed that the landlord did not have the tenant's written consent to make deductions from the security deposit and that, despite receiving her forwarding address in writing, did not refund the security deposit (except \$12.77) or file an Application for Dispute Resolution within 15 days. Therefore, I find the landlord's unauthorized deductions taken from the security deposit the landlord violated the requirements of the Act and the tenant is entitled to doubling of the security deposit.

Taking into account the landlord did refund a portion of the deposit and the tenant was agreeable that she owed for utilities, I grant the tenant's request for doubling of the net amount, as she requested. Accordingly, I award the tenant \$678.90.

Late payment and returned cheque fees

Section 7 of the Residential Tenancy Regulations provide that a landlord may charge fees for late payment of rent and returned cheques, of up to \$25.00 each, if the tenancy agreement provides for such an term. In addition, a landlord may recover the fee the landlord is charged by the landlord's financial institution where a tenant's cheque is returned.

In this case, the tenancy agreement provides a term that the tenant will pay \$50.00 for a late payment and \$50.00 for a returned cheque. I find this term is not compliant with the limitations imposed by the Regulations.

Section 6 of the Act provides that a term in a tenancy agreement is not enforceable if it is inconsistent the Act or Regulations. Accordingly, I find the term in the tenancy agreement is not enforceable. As such, I find the tenant entitled to recover the \$100.00 she paid to the landlord and I grant this portion of the tenant's claim.

Rent for August 2013

Having heard from the parties, I find it likely the parties were confused about "renewing" the tenancy agreement at the end of the fixed term. There is no need to "renew" a tenancy agreement when the fixed term is about to expire as the Act provides that the tenancy automatically continues on a month to month basis upon the expiration of a fixed term (unless the tenancy agreement stipulates that the tenant must vacate at the end of the fixed term). Renewing the tenancy is an option that both parties may agree upon but "renewing" the tenancy agreement merely extends the fixed term and does not change the amount of rent payable by the tenant. If the landlords wanted to increase the rent payable by the tenant to \$850.00 starting August 1, 2013, the parties would have had to enter an entirely new tenancy agreement. Entering into a new tenancy agreement is achieved both parties executing a new written agreement that reflects the new terms both parties agree upon. Therefore, if the parties do not agree to extend the fixed term and do not enter into a new tenancy agreement the existing agreement remains in effect on a month-to-month basis.

Where party want to end a tenancy, the party must given the other party a notice to end tenancy. The Act requires all notices to end tenancy to be in writing, whether it is from a landlord or a tenant. On occasion parties will agree to waive their entitlement to receive written notice and will accept verbal notice. Although the tenant submitted that she received and gave verbal notice in June 2013 this submission was disputed by the landlord. Where a party asserts that the tenancy ended by way of accepted verbal notice the party making the assertion bears the burden to prove this to be true. I find the disputed evidence presented to me and the fact the tenant remained in possession of the rental unit for several days into August 2013 to be insufficient to conclude was to end effective July 31, 2013 by way of accepted verbal notice.

Having dismissed the tenant's assertion that the tenancy was to come to an end effective July 31, 2013 by way of accepted verbal notice I find the tenancy was set to continue on a month-to-month basis upon expiration of the fixed term based upon the

provisions of the Act. Accordingly, I find the tenant was required to pay rent for August 2013 when due.

Below, I consider whether the tenant has established that she had to vacate the rental unit early, or suffered a loss of quiet enjoyment, given her allegations of harassment and termination of services by the landlord. It is important to note that the tenant bears the burden to prove her allegations that she suffered a loss of quiet enjoyment due to the actions of the landlord.

The tenant asserted that the landlord harassed the tenant in June 2013 and July 2013; however, the landlord denied harassing behaviour. Having heard the tenant had a new living accommodation available to her starting August 1, 2013 I find it likely that she would have moved out of the rental unit much sooner than August 9, 2013 if she was being harassed.

The tenant asserted she was harassed in August 2013 as well; however, I find the landlord sufficiently countered the tenant's assertions in denying the allegations and submitting there was no reason to harass the tenant given she had paid the rent for August and her tenancy was scheduled to end August 31, 2013.

I was provided disputed testimony that the landlord terminated garbage and laundry facilities to the tenant in August 2013 but no other evidence to support the tenant's position.

I accept the tenant was unable to access the landlord's WiFi signal; however, upon review of the tenancy agreement I find the tenant was not entitled to receive WiFi under the terms of tenancy. Therefore, I find the landlord's decision to change the password on the WiFi signal was not a violation of the Act or tenancy agreement.

In light of all of the above, I find the tenant did not meet her burden to prove harassment, loss of services or loss of quiet enjoyment.

In summary, I find the tenant has not established a basis for me to order she be refunded the rent she paid for August 2013 and I dismiss this portion of her claim.

Monetary Order

As the tenant was partially successful in this Application, I award the tenant recovery of \$25.00 of the filing fee she paid for this dispute proceeding.

I have provided the tenant with a Monetary Order with this decision, calculated as follows:

Double security deposit, as requested	\$ 678.90
Late payment and returned cheque fees	100.00
Filing fee	<u>25.00</u>
Monetary Order for tenant	\$ 803.90

The tenant must serve the enclosed Monetary Order upon the landlords and may file it in Provincial Court (Small Claims) to enforce as an Order of that court if necessary.

Conclusion

The tenant partially successful and has been provided a Monetary order in the amount of \$803.90 to serve upon the landlords and enforce as necessary.

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: October 18, 2013

Residential Tenancy Branch

