



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 the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

During the hearing the landlord referred to a previous dispute resolution decision between the parties, file #808147. The landlord submitted that the decision granted him an order of possession and monetary order based on a 10 Day Notice to End Tenancy for Unpaid Rent.

I have reviewed file #808147 and note the following details:

- The landlord obtained an order of possession and a monetary order in the amount of \$5,000.00 on May 30, 2013 based on his Application for Dispute Resolution through the Direct Request Process;
- The tenant was granted a new hearing (set for July 31, 2013) in a Review Consideration Decision issued on June 24, 2013. This decision suspended the original decision and orders;
- The decision resulting from the July 31, 2013 hearing confirmed the original decision and orders, as neither party attended the July 31, 2013 hearing; and
- On September 11, 2013 the tenant was granted another hearing through a second Review Consideration Decision. This decision suspended the decisions and orders of both May 30, 2013 and July 31, 2013.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for stop payment fees and rent at an alternate location due to flooding; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant provided a copy of a tenancy agreement signed by the parties on August 29, 2012 for a 1 year fixed term tenancy beginning on October 1, 2012 for the monthly rent of \$1,490.00 due on the 1st of each month with a security deposit of \$745.00 paid.

The tenant submits the tenancy ended on January 22, 2013 resulting from a flood in the rental unit. The tenant submits that she had to move out and she rented a unit at an alternate location.

The tenant states that she had renter's insurance that would cover additional living costs but that she was told that they would not cover any lost rent for the month of January 2013 when the flood occurred.

She testified that she was told that she had to retrieve this from the landlord. The tenant provided no evidence of her claims or the result of her claims with the insurance broker but did provide a receipt for the payment of additional rent at the new location.

The tenant states that the landlord did not refund any amount of the January 2013 rent and she seeks to recover this additional cost in the amount of \$483.90 from the landlord.

The landlord submits that the rental unit was unliveable for approximately 1 week and that the tenant could have returned however she did not return keys to the unit and she left behind several (estimates 20) glasses in the kitchen and some dresses in the closet. As such, the landlord believes the tenancy had not ended when the tenant vacated the rental unit. The tenant testified that she did not leave any dresses and that she does agree that she left behind 6 wine glasses.

In her Application the tenant submits that she had originally thought she would be returning to the rental unit when it was repaired and that she received an email from the landlord on May 7, 2013 indicated he had issued her a 10 Day Notice to End Tenancy and that it was posted to the rental unit door.

The tenant testified that she provided the landlord with her forwarding address in writing on approximately May 5, 2013 by email. She submits she provided him with her work address and that he originally responded by saying he would return the deposit and that when she checked with him later he indicated that he was not going to return the deposit.

The landlord testified that he had never received the tenant's forwarding address, until he received the hearing documents for this hearing. The tenant seeks return of the security deposit. The landlord confirmed in his testimony that he has not submitted an Application for Dispute Resolution seeking to claim against the deposit.

The tenant submits that the landlord failed to return post dated cheques that she had provided to him for the payment of rent for the period from February 2013 to September 2013 and that as a result she has had to put stop payments on those cheques. She seeks compensation in the amount of \$62.50.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

As a result of the flood of January 2013 I find the landlord was unable to comply with Section 32 of the *Act*, at least temporarily. I am satisfied that resulting from this inability to comply the tenant has suffered a loss of having to pay additional rent at a new location.

However, I am also satisfied that non-compliance was of a temporary nature and as such, the landlord should have been given an opportunity to discuss with the tenant some options for temporary arrangements that may have resulted in less of a loss for the tenant.

As such, I grant the tenant the equivalent of a per diem loss of value in her tenancy for the 8 days of the month of January that she was unable to live in the unit or a total compensation of \$385.00.

Because a new hearing has been granted on the landlord's Application to end the tenancy; the original decision and orders have again been suspended and that decision is contingent upon the determination of the end date of the tenancy, I find that it is premature to adjudicate a claim regarding the return of the security deposit to the tenant. I dismiss this portion of the tenant's claim with leave to reapply after a final decision has been made on the landlord's Application.

Further, in relation to the tenant's claim regarding the cost of placing stop payments on post dated cheques is also tied to when the tenancy ended I find this portion of the tenant's Application is also premature. I dismiss this portion of the tenant's claim with leave to reapply after a final decision has been made on the landlord's Application.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$410.00** comprised of \$385.00 compensation for loss of value of the tenancy and \$25.00 of the \$50.00 fee paid by the tenant for this application, as she was only partially successful.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: September 11, 2013

Residential Tenancy Branch

