



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 was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Tenant confirmed seeking return of double the security deposit plus compensation. It is noted that this claim is set out in the details of the application. It is also noted that the total monetary claim is set at \$950.00 and this is the amount that will be considered for both claims.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy began on April 1, 2009 and ended on October 1, 2012. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$750.00. A move-in inspection was not completed.

The Tenant provided the forwarding address in writing on October 12, 2012. The Landlord returned \$650.00 of the security deposit to the Tenant in October 2012.

The Tenant claims return of double the security deposit. The Landlord states that a portion of the security deposit was retained by the Landlord for damages to the unit and that the Landlord did not make an application to claim against the security deposit.

The Tenant states that in the last month of the tenancy, the Landlord's parents frequently entered the unit without permission or the knowledge of the Tenant on at least three occasions. On one of those occasions, the Landlord's repair person worked on renovations to the unit over the last three days of the tenancy. The Tenant states that she was not informed of this work and although she called the Landlord to complain, the Tenant allowed the worker to complete the work. The Tenant claims compensation for loss of quiet enjoyment of the unit.

The Landlord states that the Landlord's parents verbally informed the Tenant when the Tenant gave notice to end the tenancy on August 31, 2012 that the Landlord would be entering the unit to show the unit to prospective tenants and to make repairs. The Landlord states that she is not sure if any dates were provided to the Tenant for these entries and that although she does not know for sure, she believes that the Tenant gave permission as the Tenant did not disagree with the Landlord's parents. The Tenant states that nothing was said to her about entering the unit when the Tenant gave her notice to end the tenancy.

Analysis

Section 38 of the Act provides 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 repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the

security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenant double the security deposit in the amount of **\$1,500.00**. Deducting the **\$650.00** already returned to the Tenant, I find that the Tenant has substantiated a monetary entitlement of **\$850.00**.

Section 29 of the Act provides that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Although the Landlord states that permission was received from the Tenant for the Landlord to attend the unit throughout the month of September 2012, this evidence is indirect evidence and not certain. AS the Tenant has provided direct evidence that no permission was given to the Landlord, I find on a balance of probabilities that the Landlord entered the Tenant's unit without permission or the Tenant's knowledge. As a result, I find that the Tenant is entitled to compensation of **\$100.00**.

AS the Tenant has been successful with its application, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,000.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,000.00**. If necessary, this order 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 Act.

Dated: October 21, 2013

Residential Tenancy Branch