



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 an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for double the security deposit and for compensation for the loss of quiet enjoyment. The tenant also applied for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant stated that she had mailed her evidence to the landlord's brother who was also the building manager and acted on behalf of the landlord on occasion. The evidence was mailed by express post and the tenant provided a tracking number.

Issues to be decided

Is the tenant entitled to the return of double the security deposit and to the recovery of the filing fee? Is the tenant entitled to compensation for loss of quiet enjoyment?

Background and Evidence

The tenancy started about three years ago. The monthly rent was \$1,100.00 due on the first of each month. Prior to moving in, the tenant paid a security deposit of \$550.00. Both parties agreed that the tenant gave notice to end the tenancy in writing on May 23, 2013, with an effective date of June 30, 2013. Rent was paid for the month of June, but the tenant moved out sometime during the first half of June.

The tenant stated that prior to moving out, the landlord had showings by appointment except for one occasion when the landlord showed up without notice, along with a prospective tenant.

The tenant's advocate, who is also her daughter, stated that on June 02, 2013, she gave the landlord her business card asking him to return the security deposit to that address.

The landlord denied having received this business card and stated that he had not received any forwarding address for the tenant prior to receiving the notice of hearing.

On June 23, 2013, the landlord let his painters into the rental unit, without providing the tenant with prior notice. The tenant had a few cleaning supplies in the unit which the painters placed in the bath tub. Other than some spice jars, there were no other belongings of the tenant in the unit.

The tenant is claiming the return of double the security deposit and \$1,100.00 as compensation for the loss of quiet enjoyment.

Analysis

Return of double the security deposit - \$1,100.00

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, the tenant failed to provide the landlord with her forwarding address in writing and therefore did not receive her security deposit. Accordingly the tenant is not entitled to the return of double the security deposit. The tenant is however entitled to the return of the base amount of the security deposit.

Compensation for loss of quiet enjoyment - \$1,100.00

The tenant had already moved out of the rental unit but had paid rent up to the last day of June 2013. The landlord started painting the unit without providing the tenant with notice. The tenant also stated that the landlord showed the unit once without providing notice.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In this case, the landlord starting painting the unit without giving the tenant any notice. The tenant had already moved out and therefore any inconvenience caused to the tenant was minimal. Other than cleaning supplies and spice jars in a cabinet, the tenant did not have any other belongings that were present in the unit and could have been damaged during the painting. The painters placed the cleaning supplies in the bath tub. I find that this inconvenience to the tenant was minimal, but did result in a reduction of the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation existed. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on all of the above, I find it adequate to award the tenant \$100.00 as a minimal award for inconvenience suffered by the tenant when the landlord did not provide adequate notice to enter the rental unit.

Since the tenant has proven most of her case, I award her the recovery of the filing fee of \$50.00. Overall the tenant has established a claim of \$550.00 for the return of the security deposit, \$100.00 for compensation and \$50.00 for the filing fee for a total of \$700.00.

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order in the amount of **\$700.00**.

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 24, 2013

Residential Tenancy Branch

