



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, O, MNSD

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The landlord's application is a request for a monetary order for \$850.00, and an order to retain the full security deposit of \$400.00 towards the claim.

The tenant's application is a request for a monetary order for \$3047.95.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for \$850.00, and an order to retain the security deposit towards the claim?

Is the tenant entitled to a monetary order for \$3047.95?

Landlord's application

Background and Evidence

The landlord testified that:

- He had come to an agreement with the tenant allowing her to vacate the rental unit without giving the proper notice, on the condition that the rental unit was left properly cleaned and in rentable condition and he's provided photo evidence in support of this claim.
- When the tenant vacated, the unit was not left in rentable condition and as a result they had to do significant cleaning before being able to rent the unit.
- This resulted in the loss of rent for the month of September 2013, and therefore since the tenant did not comply with the agreement he feels the tenant should be liable for that lost rental revenue of \$800.00 plus his filing fee of \$50.00.

The tenant testified that:

- The landlord agreed that he would waive the requirement for the proper notice to end tenancy and allow her to move out of the rental unit at the end of August 2013 as long as she left the rental unit properly cleaned.
- As you can see from the photo evidence she has supplied, the rental unit was left completely clean and in perfectly rentable condition.

- The carpets were not professionally cleaned, however she cleaned them herself and they were left as clean as they were when she moved in.
- She has provided witness statements from people who viewed the rental unit and those statements support her claims that the rental unit was left clean.
- She therefore believes that the landlord should be bound by the agreement to allow her to move at the end of August 2013 without the required notice to end tenancy.

Analysis

I have reviewed the evidence provided by both the landlord and the tenant, and it is my finding that the tenant did leave these rental premises in clean condition.

The tenant has provided witness statements, and numerous photographs that show that this rental unit was left in a clean condition and fully rentable.

The photos provided by the landlord show that some minor cleaning was missed, however there was nothing of significance and it is my finding that this minor cleaning should not have interfered in any way with the re-renting of the unit.

Therefore it is my finding that the tenant did comply with the agreement made with the landlord and therefore the landlord is bound by the agreement allowing the tenant to vacate the rental unit without the required notice to end tenancy.

I therefore will not allow the landlords claim for rent for the month of September 2013 or for his filing fee. The landlord must therefore return the tenants full security deposit.

Tenant's application

Background and Evidence

The tenant testified that:

- She believes the landlord had no reason to withhold her security deposit, and therefore he should be returning her security deposit double.
- During the tenancy the landlord failed to supply sufficient heat to the rental unit, and even when he did supplied an infrared heater it would not heat the unit sufficiently.
- She on numerous occasions asked the landlord to supply further heat however he refused to do so and therefore she believes she should be compensated for lack of proper heat.
- She also believes the landlord should compensate her for the cost of having to have her mail forwarded, as she believes the landlord withheld some of her mail.
- The landlord gave her a notice to end tenancy which she believes was totally false however she did not dispute the notice due to the hostile conditions under which she was living and decided it was best to vacate. Once the notice was served the landlord also limited the hot water to the rental unit.
- She would therefore like the landlord to pay for the cost of her move, as she felt she was forced to move since the harassment from the landlord made it impossible to continue living in the rental unit.
- She also believes that the landlord's daughter moved into the rental unit, and that is the real reason why he wanted the tenancy ended. She therefore believes that she should be compensated with the return of her last month's rent.
- She also believes the landlord should pay her retribution for all the harassment she had to put up with during the tenancy which included loss of quiet enjoyment due to the landlord entering the suite illegally, unreasonable ongoing noise, threatening and intimidating behavior, and restricting of services.

She is therefore requesting a monetary order as follows:

Double the \$400.00 security deposit	\$800.00
Lack of heat in the rental unit	\$500.00
Cost of forwarding mail	\$47.95
Cost of her move	\$400.00
Return of last month's rent	\$800.00
Retribution for violations of the Act	\$500.00
Total	\$3047.95

In response to the tenant's testimony the landlord testified that:

- He has filed a claim against the tenant's security deposit, and it was filed within the time limit, and therefore that is why it has not been returned.
- He supplied in infrared heater to the tenant that is rated for 1000 ft.² and is a very expensive heater. The tenant's rental unit is only 600 ft.² and therefore it should have very efficiently heated that unit.
- At no time has he ever withheld any of the tenants mail, and he has no idea what she is referring to.
- He fails to see how he should be responsible for the cost of the tenants move, at no time did he ever harassed the tenant and although he did at times enter the tenants unit without giving any notice to do so, that is because originally they had an agreement that he could enter whenever he wished. It was only later on she became adamant on wanting notice entry and therefore he then supplied proper notice.
- The unit was re-rented to a non-family member, it was not rented to his daughter and in fact his daughter is living with her grandmother.
- Although there may have been some hostile communication between himself and the tenant, this was due to frustration when dealing with this tenant, and there was not a pattern of ongoing harassment.
- He therefore believes that the tenant's full claim should be dismissed.

Analysis

As stated in the previous decision I have denied the landlords request for rent for loss rental revenue, and therefore the landlord is required to return the tenants security deposit. I will not however order that the deposit be returned double, as the landlord did apply for dispute resolution within the required timeframe.

I deny however the tenants claim for lack of heat. This rental unit is heated with a wood furnace, and heat from wood furnaces does often fluctuate. Further the landlord did supply the tenant with an infrared heater rated to heat the full rental unit, and although the tenant claims that she on numerous occasions told the landlord that the heat was insufficient, I'm not convinced that the landlord was aware of the deficiency.

I also deny the tenants claim for having her mail forwarded. The tenant stated that she suspects that the landlord withheld her mail; however she has provided no conclusive evidence to show that the landlord interfered with her mail.

I also deny the tenants claim for moving costs. The tenant was given a notice to end tenancy which she claims was invalid, however she filed no dispute of that notice, claiming that she felt forced to move due to the hostile relationship between herself and the landlord, however it's my finding that the tenant has not met the burden of proving that the landlords actions forced her to move.

I also deny the claim for the return of the tenants last month's rent. If the landlord gives a notice to end tenancy for landlord use, then the landlord would be required to give the equivalent of one month free rent, or give the last months rent free. In this case however the landlord gave no such notice, and therefore no compensation is required. Further although the tenant states she suspects the landlords daughter moved into the rental unit, the tenant has supplied no evidence in support of that claim, and the landlord has supplied evidence that the unit was rented to a non-relative.

This tenancy ended at the end of August 2013 by mutual agreement, and as a result of any notice to end tenancy.

Therefore the total amount of the tenant's claim that I have allowed is the return of the tenant's \$400.00 security deposit.

Conclusion

The landlord's application is dismissed in full without leave to reapply.

I have issued an order for return of the tenant's full \$400.00 security deposit and the remainder of the tenant's application is dismissed 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: October 23, 2013

Residential Tenancy Branch

