



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced January 1, 2013, between the tenant KK and the landlords. The monthly rent of \$950.00 was due on the first day of the month. The tenant paid a security deposit of \$450.00. A move-in inspection was not conducted and a move-in condition inspection report was not completed.

On June 2, KK's boyfriend JC, and KK gave the landlords an offer to rent which would add JC to the tenancy agreement as a co-tenant. The copy submitted by the tenant in evidence was not signed by the landlord. Shortly after this conversation KK left the country for a temporary absence.

There was a problem with the main sewer line into the apartment building which resulted in the apartment being flooded with sewage three times between June 28 and July 3.

After some discussion the parties agreed that the tenancy would be ended pursuant to a Mutual Agreement to End Tenancy effective 1:00 pm, July 9, 2013. Throughout this discussion the landlord treated JC as a sub-tenant of and agent for KK. The agreement was not signed until the landlord spoke to KK on the telephone confirming that she wanted to end the tenancy. A forwarding address was given to the landlord in writing on July 9. The landlord returned the July rent to JC.

On July 10 the landlord e-mailed KK at 11:03 am:

"JC has made it possible that you will not receive your full damage deposit back.
If I have to have someone come and take away garbage it will be deducted from

your damage deposit. If you would like him to do that I'll give you a few days to do so."

KK replied at 1:59 pm:

"Thank you for letting me know and I will get JC to clear the garbage up as soon as possible."

It is common ground that when JC went to the rental unit late in the afternoon of the next day he found that everything had been hauled away.

On July 12, at 3:11 pm, in response to an e-mail from KK about the security deposit the landlord e-mailed KK:

"I had to have the garbage removed immediately so I paid someone when I didn't hear from you. . . Therefore the expense of \$125.00 will have to be taken from the damage deposit."

On July 25 the landlord returned \$330.00 to KK; the security deposit less \$120.00.

Analysis

Section 23 of the *Residential Tenancy Act* provides that at the beginning of every tenancy the landlord and tenant must complete a move-in condition inspection report in accordance with the regulation. Section 24 sets out the consequences for both parties if the report is not completed. For landlords the consequence is that a landlord's right to claim against a security deposit or pet damage deposit is extinguished.

Section 38(1) 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 either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue.

A landlord who has not complied with section 23 does not have the option of filing an application claiming against the deposit once they receive the tenant's forwarding address in writing; they can only return the security deposit within the fifteen day period or be subject to the section 38(6) penalty.

I find that the tenant is entitled to an order that the landlord pay her the sum of \$570.00, representing double the security deposit less the payment already made by the landlord

of \$330.00. I further order that as the tenant was successful on her application she is entitled to reimbursement from the landlord of the \$50.00 fee she paid to file it. Accordingly, I grant the tenant a monetary order in the amount of \$620.00.

Although the landlord's right to claim against the security deposit was extinguished by section 24 the landlord's right to claim for damages was not. This order does not prevent the landlord from filing a separate application for dispute resolution against the tenant for a monetary order for any damages or cleaning costs that may be proven at that hearing.

Conclusion

A monetary order has been made in favour of the tenant. If necessary, this order may be filed in the Provincial 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 *Residential Tenancy Act*.

Dated: January 07, 2014

Residential Tenancy Branch

