



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of her security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in October 2012 at which time the tenant paid a \$475.00 security deposit and that the tenancy ended in early September 2013 pursuant to a 2 month notice to end tenancy (the "Notice"). They further agreed that the tenant provided the landlords with her forwarding address in writing on August 14, 2013 and that the landlords did not return any part of the security deposit to the tenant. They further agreed that in the last month of the tenancy, the landlords returned to the tenant \$257.00 which was the tenant's portion of the rental payment for that month and that they did not cash the BC Housing cheque which was sent to them on behalf of the tenant for that month.

The tenant seeks the return of double her security deposit. The landlords testified that they did not return the deposit because they incurred cleaning costs. The tenant also seeks an award equivalent to the BC Housing portion of her rent pursuant to section 51 of the Act as compensation for having been served with the Notice.

The tenant seeks to recover one half of the rent paid for each of the months of July and August. She testified that the landlords harassed her in a variety of ways. The tenant testified that she demanded that the landlords communicate exclusively in writing and that despite this demand, they continued to knock repeatedly on the door in an effort

to communicate with her. She stated that she would not answer the door when they knocked. She claimed that the landlords turned up the air conditioning to a setting at which the rental unit was left uncomfortably cold and that she did not draw the problem to their attention, but turned it off in an effort to stay warm. The tenant further testified that she had boxes stored in the crawl space and that when she was retrieving the boxes, the male landlord entered the crawl space and confronted her about having moved their belongings to access the area. The fact that the landlord was in the crawl space made the tenant feel trapped.

The tenant testified that on another occasion, she had items in the shared dryer at 9:00 p.m. and that the male landlord confronted her, telling her that it was too late to use the appliance. The tenant alleged that when the landlord served the Notice, he stepped into the rental unit and behaved in a threatening manner when she would not acknowledge in writing that she had received the Notice. The tenant stated that she could not close the door without pushing him with it.

The landlords denied having harassed the tenant and testified that they only knocked on the door when they needed to communicate with her. The male landlord acknowledged having entered the crawl space while the tenant was there, but testified that there was 15'-20' between them and that he entered there to advise her that she could not move their belongings. The landlords acknowledged having told the tenant that it was too late to use the dryer, but testified that she was using it at 11:30 at night rather than at 9:00 p.m. as the tenant had claimed.

The tenant seeks to recover one half of all of the rent paid during the term of the tenancy because the rental unit was not a legal suite. The tenant argued that the landlords had an obligation under section 32 of the Act to maintain the property in a manner that complied with the housing standards required by law and failed to do so by renting an unlicensed suite. The tenancy ended because the suite was illegal and the municipality demanded that the landlords either bring the suite up to code or remove the kitchen to decommission the suite. The landlords opted to remove the kitchen and ended the tenancy, which the tenant claims is a breach of the Act.

Analysis

Section 38 of the Act provides that within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the security deposit in full or file an application for dispute resolution with the Residential Tenancy Branch to retain the deposit. I find that the landlords wrongfully withheld the security deposit and pursuant to section 38(6)(b) must pay the tenant double the amount of the security deposit. I award the tenant \$950.00.

Section 51 provides that when a tenant receives a notice to end tenancy under section 49, which is the section pursuant to which the Notice at issue was given, the tenant is entitled to receive an amount equivalent to one month's rent. Section 51(1.1) provides that the compensation can take the form of one free month's rent. I find that the tenant received one free month's rent in the month of August and that nothing was paid to the landlords in that month either by her or on her behalf by BC Housing. I therefore find that she has received the compensation to which she was entitled and I dismiss her claim for s. 51 compensation.

Section 28 of the Act provides that the tenant is entitled to quiet enjoyment which includes reasonable privacy, freedom from unreasonable disturbance and use of common areas for reasonable and lawful purposes, free from significant interference. In order to establish a claim for compensation, the tenant must prove that the landlords unreasonably disturbed her or deprived her of privacy or that they significantly interfered with her attempts to use common areas for a reasonable purpose. I am not satisfied on the evidence that the tenant has suffered a compensable loss. The tenant did not have the right to unilaterally restrict the landlords' means of contact with her to written communication and I find that their attempts to contact her by knocking on the door were not unreasonable. I find that the use of the crawl space was not part of the tenancy agreement, but was a gratuitous gesture by the landlords to accommodate the tenants' storage needs after the tenancy began. The tenant did not deny that the male landlord remained at least 15' from her when they engaged in a discussion in the crawl space and I find that communication to be reasonable as the tenant acknowledged having moved the landlords' goods in order to access her boxes. I find that the purpose for the discussion, to discuss the tenant having moved the landlord's belongings, to be reasonable and I find that because the landlord maintained his distance, the intent of the discussion was likely not to threaten or intimidate. I find the crawlspace discussion was not an unreasonable disturbance or the discussion a significant interference.

The tenant did not discuss the problem with excessive air conditioning with the landlords and I find that it is entirely possible that the landlords were not aware that she found it excessively cold. Further, the tenant acknowledged that she had control over the operation of the air conditioner. I do not consider the air conditioning to be a disturbance for these reasons. As for the issue with the use of the common laundry facilities, the landlord claimed that the tenant was using the dryer at 11:30 p.m. whereas the tenant claimed that she used it at 9:00 p.m. The tenant did not deny that the landlord summoned the police at 11:50 p.m. and I find it more likely than not that the tenant was using the dryer late at night, which I find to be an unreasonable use of that common area. The tenant cannot claim compensation for interference with her own unreasonable use of a common area. The landlord denied having behaved in a

threatening manner when he served the Notice and I am not satisfied on the evidence that his actions were either threatening or unreasonable. For these reasons, I dismiss the tenant's claim for compensation for loss of quiet enjoyment.

The tenant has argued that the landlords failed to comply with their obligation under section 32 to provide residential property in a state of decoration and repair that complies with the housing standards required by law and that she is entitled to a return of half the rent paid during her tenancy because of this breach. Section 7(1) of the Act provides that if a landlord or tenant does not comply with the Act, that party must compensate the other for loss or damage that results.

While I accept that the landlord rented a suite that did not comply with regional district bylaws, I find that section 32 is inapplicable to these circumstances as that section is designed to address the state of repair of a residential property in order to ensure that it is fit for habitation rather than the question of whether it is a unit which complies with zoning bylaws. The Act is pointedly silent on the issue of illegal suites and for that reason, the Residential Tenancy Branch does not as a matter of policy require landlords who rent illegal suites to bring those suites into compliance with local bylaws.

In any event, the tenant has not proven that she suffered a loss as a result of having rented an illegal suite. While it is true that the tenancy ended through no fault of her own, she was compensated pursuant to section 51 of the Act and I see no compelling reason why further compensation should be payable. I dismiss the claim for the return of half the rent paid throughout the tenancy.

Conclusion

The tenant has been awarded \$950.00. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of 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: December 27, 2013

Residential Tenancy Branch

