



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application by the Tenant for a monetary order for return of double the security deposit paid to the Landlord, for monetary compensation under the Act or tenancy agreement, and for the return of the filing fee for the Application.

Only the Tenant and her Parent/Assistant appeared at the hearing. They provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified and supplied documentary evidence that they served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on November 14, 2013, and deemed received under the Act five days later. The Tenant also testified she sent the Landlord her evidence by registered mail on January 17, 2014. The Tenant's evidence indicates the registered mail for the notice of hearing went unclaimed by the Landlord and was returned. Under the Act, registered mail is deemed served five days after mailing. I note that neglect or refusal to accept registered mail is not a ground for review under the Act. I find the Landlord has been duly served in accordance with the Act with the required documents.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Has there been a breach of the tenancy agreement or section 38 of the Act by the Landlord?

Has the Landlord breached other portions of the tenancy agreement or the Act, entitling the Tenant to monetary compensation?

Background and Evidence

The parties entered into a written statutory form tenancy agreement on December 27, 2012, and the tenancy started on January 1, 2013. The monthly rent was \$550.00 and the rental unit was a basement suite in the Landlord's house. The Tenant paid the Landlord a security deposit of \$275.00, in cash, on December 27, 2012. The Tenant also paid the Landlord a \$100.00 key deposit, which the Tenant confirmed has been returned to her.

The Tenant testified the Landlord completed incoming and outgoing condition inspection reports.

The Tenant testified that the Landlord did not give her a written Notice to End Tenancy; the Parent of the Tenant testified that the Landlord called her and told her the Tenant had to move out. The Tenant found out that she had to leave the rental unit and did so.

At the end of the tenancy the Landlord provided the Tenant with a cheque for the return of the security deposit and the key deposit, in the amount of \$375.00.

The Tenant deposited the cheque on or about June 28, 2013. On or about July 2, 2013, the Tenant received a notice from her bank that the cheque provided by the Landlord would not be honoured. The Tenant testified that the Landlord had put a "stop payment" on the cheque. The Tenant has provided documentary evidence consisting of the refused cheque, a statement from the bank that the Landlord had put a stop payment on the cheque, and the bank statement indicating the Tenant had been charged \$15.00 in service fees due to the stopped cheque. The Tenant is claiming for the return of double the security deposit in the amount of **\$550.00**, and for the bank service charges in the amount of **\$15.00**. The Tenant also claims for travel costs; however, it was explained to the Tenant that these are not claimable under the Act.

The Tenant travelled to the Landlord's home several times with her mother, and according to the Tenant the Landlord did pay her back the \$100.00 for the key deposit. The Landlord has given several excuses to the Tenant about why the security deposit was not refunded; however, there is no evidence the Landlord had filed an Application to keep the security deposit, and the Tenant testified she did not sign over a portion of the security deposit to the Landlord at any time.

On October 18, 2013, the Tenant wrote the Landlord by registered mail and provided the Landlord with a written notice of the forwarding address to return the security

deposit to. In evidence the Tenant provided a copy of the letter and the registered mail receipt indicating it was returned unclaimed by the Landlord.

The Tenant also claims for other monetary losses under the Act and tenancy agreement.

The Tenant testified that the Landlord would often enter the rental unit without providing any notice. The Tenant testified on several occasions the Landlord came into the rental unit wearing little clothing.

The Parent of the Tenant testified that on one occasion she was taking her daughter back to the rental unit and she witnessed the Landlord sitting in the rental unit in his housecoat.

The Tenant testified that the Landlord never gave her written notices of his intent to enter.

The Tenant also testified that Landlord removed the locks from the rental unit after a flood had occurred in the rental unit. According to the Tenant's testimony, the Landlord informed her that it was illegal to have locks on the rental unit. The Tenant claims **\$100.00** for loss of the locks and for loss of quiet enjoyment of the rental unit due to the illegal entries.

As a result of the flood in the rental unit there was sewage in the bathroom area. The Landlord did not have the rental unit cleaned for several days after the flood. The Tenant testified she had to leave the rental unit to use the washroom and shower at a community centre for four days. The Tenant claims **\$100.00** for loss of use of the rental unit.

The Tenant claims for loss of use of laundry facilities. The Tenant testified that the tenancy agreement did not include laundry, but the Landlord had made a verbal agreement with her that he would provide laundry service. The Tenant testified that the Landlord did take her clothes to the laundry a few times. The Tenant claims **\$100.00** for loss of the laundry facility.

Finally, the Tenant testified that the Landlord had put restrictions on her on having guests in the rental unit. However, the Tenant did not request a monetary order for this.

Analysis

Based on the above, the undisputed testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act and the tenancy agreement.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38 of the Act and paragraph 4 of the tenancy agreement.

I find the Landlord did not return the security deposit to the Tenant as he put a stop payment on the cheque. There was no evidence that the Landlord had a lawful right or authority to do this.

Therefore, I find the Landlord has breached section 38 of the Act and paragraph 4 of the tenancy agreement. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act or the tenancy agreement to keep any portion of the security deposit. Therefore, I order the Landlord to pay the Tenant double the security deposit in the amount of **\$550.00**, pursuant to section 38 of the Act and section 4 of the tenancy agreement.

Under section 28 of the Act the Tenant is entitled to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit. Furthermore,

the Landlord has restricted rights to enter the rental unit under section 29 of the Act and paragraph 13 of the tenancy agreement.

For example, the Landlord must provide the Tenant with written notice to enter the rental unit at least 24 hours before entering the rental unit, and the written notice must state the reason for entering (which must be reasonable), and be for entry between the times of 8:00 a.m. and 9 p.m., as set out in paragraph 13 of the tenancy agreement and section 29 of the Act. I find the Landlord has breached section 29 of the Act and paragraph 13 of the tenancy agreement.

Under section 31 of the Act, the Landlord is not allowed to change the locks of the rental unit unless the Tenant agrees and the Landlord provides the Tenant with keys. Here I find the Landlord removed the locks in breach of the Tenant's right to privacy and exclusive possession of the rental unit. The Landlord is also prevented from restricting access to the rental unit by guests of the Tenant under section 30 of the Act. Therefore, I find the Tenant is entitled to **\$100.00** for loss of quiet enjoyment of the rental unit and **\$100.00** for loss of privacy and exclusive possession of the rental unit, which include the restrictions on guests, locks being removed and illegal access by the Landlord.

The Landlord is required to provide and maintain the rental unit in a state of decoration and repair that complies with health, safety and housing standards, and make it suitable for occupation by the Tenant under section 32 of the Act. I find the Landlord breached this section when he failed to repair and clean the shower and bathroom in a timely manner after the flood which occurred, forcing the Tenant to shower and use washroom facilities outside of the rental unit for a period of four days. I allow the Tenant's claim in this regard in the amount of **\$100.00**, for loss of use of these facilities.

It was not clear to me that the tenancy agreement provided the Tenant with laundry facilities, as the laundry portion of the tenancy agreement was crossed through, and therefore, I find the Tenant had insufficient evidence to prove she was entitled to laundry facilities and dismiss this portion of the claim.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$900.00**, comprised of double the security deposit ($2 \times \$275.00 = \550.00), \$300.00 for the other breaches described above and the \$50.00 fee for filing this Application.

Conclusion

The Landlord has breached several portions of the tenancy agreement and the Act.

The Landlord is cautioned to follow the provisions of the laws regarding residential tenancies, and to seek advice on provisions he may not understand. Furthermore, the Landlord is cautioned that in order to end a tenancy the Landlord must use one of the approved notices as set out in the Act.

The Tenant is granted a monetary order in the amount of \$900.00, for the awards described above.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 19, 2014

Residential Tenancy Branch

