



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC, FF
For the landlord: MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage, or loss and for recovery of the filing fee.

Both parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me, and respond to the other's evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recover the filing fee?

Is the landlord entitled to monetary compensation and to recover the filing fee?

Background and Evidence

This tenancy began on or about July 29, 2012, ended on or about January 31, 2013, and monthly rent was \$925.

The parties have been in a prior dispute resolution hearing, on December 4, 2012, on the tenant's application seeking an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property and for monetary compensation.

The hearing on December 4, 2012, resulted in a settled agreement between the two parties, which was recorded by another Arbitrator. In that Decision, the parties agreed that the tenancy would end by February 1, 2013, and that the tenant would pay no rent for December 2012, and the full rent for January 2013. Additionally the landlord was granted an order of possession for the rental unit effective February 1, 2013, by agreement.

Tenant's application-

The tenant's monetary claim is \$1850, which is the equivalent of 2 months' rent, as the tenant claimed she was entitled to receive this amount for having been evicted pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice").

In explanation the tenant submitted she is entitled to this compensation as the landlord moved her former tenant into the rental unit immediately after the tenant vacated pursuant to the 2 Month Notice, which had been issued for landlord's use.

When questioned about the Notice, as the tenant did not submit a copy of the Notice, the tenant admitted that she was issued the first page of the 2 page Notice, and as such, there were no reasons or uses given in the Notice, which are located on the approved form on the second page.

I note that the landlord submitted a copy of the Notice, which confirms that only the first page was served on the tenant.

The tenant's relevant documentary evidence included a DVD, containing audio and video images, a timeline and a witness statement.

In response the landlord submitted that at the prior dispute resolution hearing, the other Arbitrator said that the Notice was invalid and therefore there would be no eviction. The landlord submitted as there was no eviction, the tenant was not entitled to monetary compensation as it was her choice to leave.

Landlord's application-

The landlord's monetary claim is \$818.94, comprised of \$465 for a security deposit and \$353.94, for lost pay.

In support of her request for \$465, the landlord is requesting a “return of her damage deposit” and that she is entitled to this amount as the tenant left a bag of what appeared to be human feces in the heating vent, which was not discovered until March 4, 2013, according to the landlord. The landlord submitted that the bag of feces represented a health hazard and respiratory danger.

As to her claim for lost pay, the landlord submitted that she is entitled to this amount as she is losing a day’s pay for having to attend this dispute resolution hearing, for a matter which was resolved in the last dispute resolution on December 4, 2012.

The landlord’s additional relevant documentary evidence included witness statements, employment payment information, a written statement, and a copy of the dispute resolution Decision and order of possession for the rental unit, dated December 4, 2012.

In response, the tenant emphatically denied putting the bag of feces in the heating vent.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the tenant in this case, have the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Tenant’s application-

Under Section 51 (2) of the *Act*, in the case of the tenant being served a 2 Month Notice, if steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose, the tenant is entitled to an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In the case before me, it is undisputed that the landlord issued the tenant an invalid Notice, as the second page of the Notice listing the reason or use for the Notice was not attached or served. In instances of invalid Notices, the tenant is at liberty to file for

dispute resolution seeking cancellation of the Notice, which was apparently the case as that matter was the subject of the prior dispute resolution hearing of December 4, 2012.

As the landlord's Notice did not state the purpose for which the Notice was issued, I cannot therefore determine that the landlord has failed to use the rental unit for the stated purpose or taken steps to accomplish the stated purpose.

I therefore find that the tenant has not established that she is entitled to monetary compensation equivalent to 2 months' rent and I therefore dismiss her application, without leave to reapply.

As the tenant's application has not been successful, I decline to award her recovery of the filing fee.

Landlord's application-

In examining the landlord's request that she is entitled a return of "her" security deposit (incorrectly labelled a "damage" deposit), it is clear the landlord has misinterpreted the purpose and definition of a security deposit. Under section 17 of the Act, the landlord may collect a security deposit as a condition of entering into a tenancy. This deposit is held in trust for the tenant during the tenancy and must be dealt with at the end of a tenancy in accordance with section 38 of the Act. This deposit is therefore not the landlord's deposit, as stated by the landlord, but rather a sum a tenant pays at the beginning of the tenancy.

Additionally, I find the landlord submitted insufficient evidence that the tenant placed the bag of feces in the heating vent, as I do not find it reasonable that it would take at least a month to discover, given that the heating would likely be used during the winter months.

I therefore dismiss the landlord's claim for \$465, without leave to reapply.

As to the landlord's claim of \$353.94 for lost pay, landlords and tenants are only entitled to recover costs for damages or losses directly related to breaches of the Act or the tenancy agreement, pursuant to section 67 of the act. Costs incurred that relate to processing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under section 72 of the Act. I find that I do not have authority to award any other costs related to a dispute resolution proceeding and I therefore dismiss the landlord's claim to recover costs related to attending hearings or preparing for hearings, without leave to reapply.

I further do not accept the landlord's assertion that the monetary claim in the tenant's application for compensation equivalent to 2 months' rent was resolved in the dispute resolution hearing of December 4, 2012, as that matter involved cancellation of the Notice and compensation equivalent to 1 month's rent and those issues were resolved by agreement of the parties.

As the landlord's application has not been successful, I decline to award her recovery of the filing fee.

Conclusion

The tenant's application is dismissed.

The landlord's application is dismissed.

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: February 21, 2014

Residential Tenancy Branch

