



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, SS, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order for substituted service and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, her witness and all three landlords.

At the outset of the hearing the tenant clarified that she was not seeking an order to serve the landlord with documents or evidence in a different way than required by the *Residential Tenancy Act (Act)*. As such, I amended the tenant's Application to exclude this matter.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and for monies owed under the *Act* and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 51, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on March 1, 2013 as a month to month tenancy for a monthly rent of \$890.00 due on the 1st of each month and that the tenancy ended on October 15, 2013, after the landlord had issued a 2 Month Notice to End Tenancy for Landlord's Use of Property because the rental unit was going to be occupied by one of the landlords.

The tenant submitted that the security deposit was \$440.00; however the landlord had identified in correspondence to the tenant that the security deposit was \$400.00. In the hearing the landlord testified that she was uncertain as to the actual amount of the deposit.

The parties agree the landlord provided the tenant with a cheque in the amount of \$288.74 and an explanation of deductions made from the security deposit held on

October 25, 2013. The landlord had deducted the following amounts: \$12.26 for water; \$24.00 for hydro; and \$75.00 for hauling costs – totalling \$111.26. The landlord submits that she made a calculation error and she should have deducted \$121.59 from the security deposit.

The landlord submitted that her error also included changing the amount of the original deposit from \$400.00 to \$440.00 and that she should have returned \$318.41 to the tenant.

The landlord did not file an Application for Dispute Resolution seeking to claim against the deposit and there was no evidence presented by either party showing the landlord had written consent from the tenant to retain any portion of the deposit. The tenant seeks double the amount of the security deposit.

I also note that the tenant provided a copy of a Decision dated October 10, 2013 recording a settlement agreement that required the landlord to provide the tenant with compensation in the amount of \$310.00 representing ½ month's rent of \$445.00 less \$135.00 for outstanding utilities. Nothing in the Decision indicated for what period these utilities were charged.

The tenant also seeks compensation in the amount equivalent to two month's rent (\$1,780.00) because she submits that the landlord immediately re-rented the unit to another renter and the landlord was not using it for the purpose stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant submits that she had been told by the tenant who lives in the upper unit of the property that person who had been living in the bachelor suite moved over into the 1 bedroom suite that had been the tenant's suite prior to the Notice. The tenant also submits that in addition the electricity has now been cut off to the rental unit on orders from the local city by-law enforcement officers as it was an illegal suite.

The tenants witness testified that she had spoken to the woman who had lived in the bachelor unit as she was moving her belongings into the 1 bedroom unit. She stated that this woman lived in the rental unit at least through the month of November and December 2013. The witness testified that although she did not see the woman "sleeping" in the unit she heard her there.

The witness also testified that she had been informed by a local by-law enforcement officer that the city had given the landlord notice to convert the residential property back to a single family dwelling and towards that the electrician had come and cut off all electricity to the rental unit.

The female landlord submits that the 1 bedroom unit was never occupied by the woman who had been staying in the bachelor suite. She stated that the woman was a family friend had been staying in the unit until she found employment. The woman was

looking for work in both the community where the rental unit is located and another community a considerable distance away.

The landlord went on to say that they had allowed the woman to store some belongings in the 1 bedroom suite but that she never stayed in the unit. In addition, the woman obtained employment in the other community and moved to that community by November 17, 2013, as such there is no possibility that she could have been heard in the building during the month of December 2013.

The male landlord testified that he has been using the rental unit as a place that he can come to and stay while his completing research on a book that he is writing. He acknowledges he doesn't stay there full time but he has been using the unit for this purpose and that he pays the landlord partnership rent in the amount of \$450.00 per month.

The female landlord also testified that the electricity has not been cut off to the entire basement or even rental unit. The landlord stated that only the stove/oven had been disconnected.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

While the tenancy ended on October 15, 2013 neither provided evidence or testimony as to when the landlord had received the tenant's forwarding address. However, I note that the landlord had written her explanation of the deposit deductions on October 25, 2013 and that the envelope received by the tenant with this explanation was post marked October 28, 2013. As such, I find the landlord had the tenant's forwarding address at least by October 25, 2013.

As there is no evidence by either party that the tenant had agreed in writing for the landlord to withhold any amounts from the deposit I find the landlord was required under Section 38(1) to either return the full amount of the deposit or file an Application for Dispute Resolution claiming against the deposit no later than November 10, 2013.

As the landlord failed to take either of these actions I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit less the amount that she has received already.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under

the tenancy agreement if the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. Occupation of the rental unit does not require the landlord to live in the rental unit but rather that the landlord must retain possession of the unit to be used however they see fit.

Section 51(1) of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement. In addition, Section 51(2) requires the landlord to pay the tenant double the amount of rent if the unit is not used for the stated purpose in the notice for at least 6 months beginning within a reasonable time after the effective date of the notice.

Much of the evidence relating to this issue presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

As such, I find that the tenant has failed to provide sufficient evidence to establish, on a balance of probabilities the landlord had re-rented the unit out to another tenant; that the unit no longer had electricity (or the significance of that were it confirmed); or that the landlord is not occupying the rental unit. I therefore dismiss this portion of the tenant's Application.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$616.26** comprised of \$880.00 double the security deposit and the \$50.00 fee paid by the tenant for this application less \$288.74 security deposit already returned to the tenant.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: March 20, 2014

