



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This is an application for a Monetary Order for \$3200.00 and recovery of the \$50.00 filing fee. The applicant is also requesting an Order for the landlord to return personal property.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the applicant established a monetary claim for \$3200.00?

Should an order be issued for return of the applicant's personal property?

Background and Evidence

The applicant testified that:

- This tenancy began in October of 2003 and at that time a security deposit of \$600.00 was paid.
- At the end of the tenancy the monthly rent was \$1250.00.
- The landlord served her with a two-month Notice to End Tenancy for landlord use stating that he intended to move into the rental unit.

- She complied with a two-month Notice to End Tenancy and vacated the rental unit on August 1, 2013.
- To date the landlord has failed to comply with the reasons given for ending the tenancy, and the rental unit is still empty.
- She is therefore requesting an Order for compensation equivalent to 2 two months' rent as required under the Residential Tenancy Act.
- The landlord has also failed to return her security deposit, even though she verbally gave him a forwarding address.
- The landlord has also failed to allow her to recover numerous belongings that she still has at the rental property.
- She was unable to remove all of her belongings by the move out date; however the landlord had agreed to allow her one more month to get everything out and then has reneged on that agreement.
- She is therefore asking for an order for her belongings to be returned, and a Monetary Order as follows:

Compensation required under the act	\$2500.00
Return of security deposit	\$600.00
Filing fee	\$50.00
Total	\$3150.00

The respondent testified that:

- He did give the tenant a two-month Notice to End Tenancy for landlord use as he fully intended to move into the rental unit, however after the tenant vacated the rental unit was vandalized on numerous occasions.
- On one occasion the neighbors witnessed the applicant on the rental property, and he believes it is the applicant that has cause the vandalism, and he has filed a police report.
- Either way whether it was the applicant or someone else who cause the vandalism, he has been unable to move into the rental unit due to the vandalism which included having all the copper pipe and wiring stripped out of the rental property.
- The rental unit needs extensive work before he'll be able to move into the rental unit.
- He has not returned the tenants security deposit, because the tenant never gave him a forwarding address. The only address the tenant gave him verbally was the street in Maple Ridge that she was moving to however she did not include the house address.
- He is also fully willing to allow the tenant to retrieve all of the belongings she has at the rental property as that will save him the time and effort needed to remove

all her junk; however he is only willing to do so if there is a police presence at the time, as he does not trust the tenant or her friends.

- He is willing to make arrangements with the tenant for her to retrieve her belongings, and he will make arrangements to have the police present at that time.

In response to the landlord's testimony the tenant testified that:

- She did not cause any of the vandalism to the landlord house, and has never been charged by the police.
- It is her understanding that another person in the neighborhood has recently been charged in these vandalism incidents.

Analysis

It's my decision that I will not allow the claim for compensation equivalent to two months' rent.

Section 51(2) of the Residential Tenancy Act states:

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case however it's my finding that the landlord has been unable to accomplish the stated purpose for ending the tenancy due to extensive vandalism to the rental property, and therefore the situation is beyond his control.

I also deny the request for return of the security deposit.

Section 38 of the Residential Tenancy Act states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case the tenant has admitted that she did not give the landlord a forwarding address in writing, and that it was only given verbally. Further the landlord has stated that the address given to him was incomplete.

Therefore at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

At the hearing the tenant stated that the address on the application for dispute resolution is the present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today, March 17, 2014.

As far as the request for an order for return of personal property is concerned, since the landlord has stated he is fully willing to make arrangements for the tenant to retrieve her personal property, I will not issue any order for the return of that property, however if the landlord fails to make those arrangements within a reasonable timeframe the tenant may reapply for an order.

I will not allow request for recovery of the filing fee.

Conclusion

The claim for section 51(2) compensation is dismissed without leave to reapply.

The claim for the return of the security deposit is dismissed, with leave to reapply if the landlord does not either return the deposit, or apply for dispute resolution to keep the deposit within 15 days of today's date.

As stated above I will not be issuing an Order for the return of personal property, however that portion of the claim is also dismissed with leave to reapply if the landlord does not make arrangements to allow the tenant to retrieve her property within a reasonable timeframe.

The request for recovery of the filing fee is dismissed without leave to reapply.

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 17, 2014

Residential Tenancy Branch

