



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement; compensation reflecting the double return of a portion of the combined security / pet damage deposit; and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is the upper portion of a house. The lower portion of the house is a separate rental unit.

Pursuant to a written tenancy agreement, tenancy began on September 27, 2011. Monthly rent of \$1,750.00 was due and payable in advance on the first day of each month. A security alarm fee of \$25.00 was also payable monthly. A security deposit of \$875.00 and a pet damage deposit of \$875.00 were collected [total: \$1,750.00]. A move-in condition inspection report was completed with the participation of both parties.

Following notice by email dated July 31, 2012, tenancy ended and the tenant vacated the unit on August 31, 2012, at which time the parties undertook a move-out condition inspection. \$1,550.00 of the combined security / pet damage deposit was repaid on that occasion; the balance of \$200.00 (\$1,750.00 - \$1,550.00) was withheld by the landlord pending the completion of some additional cleaning. Notations made on the move-out condition inspection report appear to indicate that the tenant agreed the landlord would withhold \$200.00 from the combined deposit "until [unit] cleaned again." The tenant testified that she reluctantly agreed to this withholding. The tenant provided her forwarding address on the move-out condition inspection report.

It was hoped that the additional cleaning would be completed by September 06, 2012. Ultimately, however, the tenant did not return to the unit after August 31, 2012 in order to do more cleaning, and she paid nobody else to do it on her behalf. The tenant testified that she did not genuinely consider that additional cleaning was required, and the service provider she had already paid to clean the unit informed her that a further cost would be assessed if the tenant insisted on a return visit.

By email dated September 07, 2012, the tenant requested repayment of the \$200.00 withheld by the landlord. Subsequently, as the landlord wished to conclude the matter, a cheque dated September 14, 2012 for \$200.00 was mailed on September 17, 2012 and was received by the tenant on September 19, 2012. More than 1 year later, the tenant filed an application for dispute resolution on December 03, 2013.

In addition to their written submissions, during the hearing the parties set out their perspectives on circumstances surrounding the dispute by way of affirmed testimony.

Analysis

Based on the testimony and documentary evidence which includes, but is not limited to, considerable email exchanges, printed text messages and photographs, the various aspects of the tenant's claim and my findings around each are set out below.

\$2,625.00: failure to maintain surrounding yard

The tenant has calculated this aspect of the claim on the basis of 25% of the \$1,750.00 monthly rent paid for the 6 month period from March 1 to August 31, 2012:

$$\$1,750.00 \times 25\% = \$437.50$$

$$\$437.50 \times 6 = \$2,625.00$$

I find that the general environment adjacent to the unit is "forested" and "outdoors" in nature rather than urban. Further, the immediate yard area does not include manicured lawns or kept gardens. The tenant's specific concerns include allegedly insufficient and irregular yard maintenance by the landlord, long-standing tall weeds, long-standing piles of dead branches and, at one stage, various gardening tools left "all over the yard in front of my entrance." The landlord describes the yard / outside premises as a "work in progress," and informed the tenant at the outset of tenancy that s/he would "take care of maintaining the exterior (as it was not really possible to simply mow the lawn etc.*)" As well, the landlord claims that the tenant fully understood and seemed to be seeking the outdoors nature of the property while she considered entering into the tenancy.

I find, on balance, that the tenant formed a reasonable expectation that a somewhat greater degree of yard maintenance would be undertaken by the landlord than turned out to be the case. In the result, I find that the tenant has established entitlement to nominal damages in the limited amount of **\$315.00**, which is calculated as follows:

$$\begin{aligned} \$1.75 \text{ (daily)} \times 30 \text{ (average \# of days / month)} &= \$52.50 \text{ (monthly)} \\ \$52.50 \text{ (monthly)} \times 6 \text{ (\# of months at issue)} &= \$315.00 \end{aligned}$$

\$525.00: *failure to disclose significant bug problem*

The tenant has calculated this aspect of the claim on the basis of 5% of the \$1,750.00 monthly rent paid for the 6 month period from March 1 to August 31, 2012:

$$\begin{aligned} \$1,750.00 \times 5\% &= \$87.50 \\ \$87.50 \times 6 &= \$525.00 \end{aligned}$$

Further to observations made immediately above concerning the general environment and yard area around the property, I find that in response to the tenant's original inquiries and subsequent expression of concern about ants in particular, the landlord acknowledged the existence of ants, provided ant traps and had the exterior of the property sprayed. The tenant considers that the landlord downplayed the presence of ants during the period while the parties were discussing a possible tenancy, failed to provide her with sufficient ant traps, and unreasonably delayed spraying. On a balance of probabilities I find that the tenant has failed to meet the burden of proving entitlement related to this particular aspect of the claim, and it is hereby dismissed. Specifically, I am unable to conclude that the landlord deliberately set out to mislead the tenant, or that the landlord was negligent in responding to the tenant's concerns.

\$2,187.50: *failure to uphold agreement regarding downstairs occupancy*

The tenant has calculated this aspect of the claim on the basis of 25% of the \$1,750.00 monthly rent paid for the 5 month period from November 1, 2011 to March 31, 2012:

$$\begin{aligned} \$1,750.00 \times 25\% &= \$437.50 \\ \$437.50 \times 5 &= \$2,187.50 \end{aligned}$$

The tenant testified that she came to understand that there would be no full time / regular occupant in the downstairs portion of the house during her tenancy. I find that this understanding arose from conversations with the landlord prior to the time when the parties made a decision to enter into a tenancy agreement. Following the landlord's

receipt of the tenant's email on February 02, 2012, in which she identified her concern with what had seemingly become full time / regular occupancy by a family member (landlord's brother-in-law) since sometime in October 2011, the family member was asked by the landlord to vacate the unit, which he did effective March 15, 2012. I find on a balance of probabilities that the tenant came reasonably to her understanding / expectations concerning the nature of occupancy in the downstairs. Accordingly, I find that the tenant has established entitlement to nominal damages in the limited amount of **\$303.75**, which is calculated as follows:

$$\begin{aligned} \$2.25 \text{ (daily)} \times 30 \text{ (average \# of days / month)} &= \$67.50 \text{ (monthly)} \\ \$67.50 \text{ (monthly)} \times 4\frac{1}{2} \text{ (November 1, 2011 to March 15, 2012)} &= \$303.75 \end{aligned}$$

\$400.00: double the return of \$200.00 withheld from the security / pet damage deposit

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit. It is this statutory provision on which the tenant relies in this aspect of her claim. During the hearing the tenant specifically indicated that her application for compensation reflecting the double return, concerns the limited amount of \$200.00 which was withheld by the landlord on August 31, 2012.

Further to the above, section 38 of the Act provides as follows:

38(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or....

I am satisfied that the move-out condition inspection report and conversations / understandings between the parties at the time of the move-out condition inspection, reflect the tenant's agreement, even while it may have been reluctant, that the landlord retain \$200.00 from the combined deposit pending the tenant's undertaking to have further cleaning completed. Despite the fact that the tenant did not subsequently arrange for any further cleaning, the landlord repaid the \$200.00. In the result, I find

that the tenant has failed to establish entitlement to the double return of any portion of the combined deposit, and this aspect of the application is hereby dismissed.

\$100.00: *filing fee*

As the tenant has achieved a limited measure of success with her application, I find that she has established entitlement to recovery of **\$50.00**, or half the filing fee.

Total entitlement: \$668.75 (\$315.00 + \$303.75 + \$50.00)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$668.75**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims 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: April 03, 2014

Residential Tenancy Branch

