



Dispute Resolution Services

Page: 1

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 the return of double the security deposit, for compensation for harassment by the landlord and for the recovery of the filing fee. During the hearing the tenant withdrew the portion of her application that dealt with compensation. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. Both parties were given full opportunity to present evidence and make submissions.

At the start of the hearing, the landlord objected to being referred to as the landlord because she felt it was discriminatory and requested that she be called the owner.

Issues to be Decided

Does the tenancy fall under the jurisdiction of the *Residential Tenancy Act*? Is the tenant entitled to the return of double the security deposit and the filing fee?

Background and Evidence

The parties could not agree on the start date of the tenancy. The tenant stated that she moved in on September 15, 2013. The monthly rent at that time was \$750.00. The tenant stated that on August 22, 2012, she paid a security deposit of \$400.00 and \$325.00 for rent for September 15 – 30, 2013. The tenant filed copies of the both sides of the cheque written on August 22 which has “deposit” written at the bottom of the cheque. The owner stated that the tenant moved in on August 22 and the cheque for \$400.00 was not a deposit but was prorated rent for August.

The rental unit is a two bedroom condo and the tenant was supposed to share the accommodation with the owner’s daughter. The tenant stated that the owner’s daughter never lived in the condo, but had left some belongings behind which the tenant moved to a storage area of the condo. The owner stated that the tenant set up an office in the second bedroom without her permission and then refused to allow the owner to visit the condo.

The owner stated that she owned the condo and the tenant moved in as a roommate to her daughter who is also part owner. However, the owner was not sure of whose name was on the title of the condo.

On September 16, 2013, the owner informed the tenant that she must move out by October 31, 2013. The tenant stated that the owner continued to leave messages and send emails and finally she served the tenant with a notice to end tenancy dated October 18, 2013, sent by registered mail.

The tenant stated that the manager of the strata served her notice to show the condo to a prospective tenant and filed a copy of the notice. The interaction between the parties got steadily worse and the owner hired the services of a lawyer. The parties eventually came to an agreement to end the tenancy on November 30 and the tenant was provided with a rent free month. On November 30, 2013, the tenant moved out and gave the owner her forwarding address.

Analysis

Section 4 of the *Residential Tenancy Act*, addresses what the *Act* does not apply to. It states that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

Based on the testimony of the parties, I find that the owner has not proven that her daughter is a part owner of the condo. However even if I accept that her daughter is an owner, I find that her daughter did not live in the condo during the tenancy. In her written submission, the daughter states that she only found out that the tenant had moved her belongings into storage was after the tenant moved out. This statement further confirms the tenant's testimony that the daughter did not live in the condo.

Based on the above, I find that the matter falls within the jurisdiction of the *Residential Tenancy Act*.

The owner further argued that the tenant did not pay a security deposit. Both parties agreed that the tenant paid \$400.00 on August 22, 2013. The tenant stated it was for a security deposit and had the word "deposit" written on the cheque. The landlord stated that it was for prorated rent for August. Even if I accept the landlord's testimony that it was prorated rent for August, the amount of \$400.00 is in excess of rent for the period of August 22 – 31, 2013 which should have been \$241.00. Based on the testimony and evidence of both parties, I find that on a balance of probabilities, it is more likely than not that the tenant paid a security deposit on August 22, 2013 in the amount of \$400.00.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the landlord was notified of the tenant's forwarding address on November 30, 2013. I further find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$400.00 and is obligated under section 38 to return double this amount along with the accrued interest of \$0.00. Since the tenant has proven her case, she is also entitled to the recovery of the filing fee of \$50.00.

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$850.00**, which represents double the base security deposit and the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of \$850.00.

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: June 11, 2014

Residential Tenancy Branch

