



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The landlord's wife attended the hearing and testified as a witness for the landlord. The tenant attended the hearing and was represented by an advocate, described as a community advocate.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

The rental property is one half of a duplex in Burnaby. The landlord owns the property. He lives in one half of the duplex and rents the other half to tenants as shared living space. There are three bedrooms, a common living area and shared kitchen and bathroom facilities. The landlord's daughter is one of the occupants. Another occupant is the friend of the landlord's daughter.

The tenancy agreement was prepared on a pre-printed form entitled: "Application For Rent of Suite". Below the heading in handwriting was the following: "Four Month Fix Term Lease". The agreement provided for a monthly rent of \$550.00. The tenancy was to commence on January 1, 2014. The agreement was signed on December 14, 2013 and the tenant moved in to the rental unit, referred to as: "Rm #3" in late December,

The landlord testified that the tenant moved out of the rental unit without proper notice on March 19th. She refused to participate in a move-out condition inspection. The landlord testified that he immediately advertised the unit for rent on Craigslist and

posted a "For Rent" sign in the window. He was unable to secure a new tenant. . In the landlord's application he claimed rent for April and claimed the for the security deposit of \$275.00., for a total of \$825.00. He later added a claim for cleaning costs in the amount of \$167.35, for a total of \$992.35.

The landlord claimed that on Thursday March 13th, 2014 the tenant brought three guests to the rental property. He alleged that she decided to host a party on the day she was warned that her room-mate would be recuperating from surgery. The landlord claimed that: "On Thursday, March 13th, 2014, I received numerous complaints of noise and disturbances that you and your guests were causing."

The tenant denied these allegations. She said that she had three guests who were classmates who visited in her room a 6:00 P.M. on Thursday. There was no alcohol and no "drinking games" as alleged by the landlord. When she arrived at the rental property her room-mate's aunt was in the living room. She took her guests to her room and soon after she received a phone call from the landlord's daughter complaining that she was having a party.

The tenant said her guests were present in her room for not more than 10 minutes before she was yelled at and threatened by her room-mate, "A", who threatened to punch the tenant and had to be restrained by her mother, who was present . The landlord's wife also attended and the tenant said she was fearful for her safety and immediately left the rental property with her friends.

The landlord testified at the hearing that he only recently re-rented the unit. The landlord claimed that the tenant extinguished any right to the security deposit by refusing to participate in a move-out inspection and claimed that he was therefore entitled to keep the deposit in addition to the claimed monetary award.

The tenant testified that on March 19th she gave the landlord written notice that she was moving out on that day. She said that she felt unsafe living in the rental property after the incident on the 13th and decided that she could no longer endure the hostile living conditions that she had experienced since moving in. The landlord responded by e-mail on March 19th. He said that he received numerous complaints of noise and disturbance the tenants and her guests were causing, despite having been told a week earlier that her room-mate would be recuperating from a surgery on that day. He said in part that:

You decided to host a party on that one day. You and your guests stocked the fridge with beer, the freezer with vodka, and you loudly rummaged through the house looking for cards to play drinking games.

The landlord went on to say that: "After refusing over a dozen requests to keep it down and move your party elsewhere, your roommate contacted my wife to request peace and quiet."

The tenant denied each of the landlord's allegations. In her response to his e-mail she said that she had three guests in her room at 6:00 P.M. after a day at classes. She said:

There was no music, no alcohol, no drinking games, simply 3 of my classmates having a discussion. They were at the house for all of 10 minutes before I was yelled at in front of them and threatened with violence. This is the first I have ever heard of noise complaints, and I'm curious who these complaints came from – was it possibly your wife who was over at my apartment yelling at me, along with my roommate and her family? As for the alcohol you mentioned in the fridge, I can assure you none of that was mine. Perhaps it belonged to my roommates, your daughter and her best friend, as they always have wine and beer in the fridge (never have I seen any vodka).

The tenant said the landlord's wife told her that she was not entitled to have friends over because she had not given advance notice of her plans.

The landlord's wife testified at the hearing. She said that she attended at the rental property after she received a phone call saying that there was a "ruckus" next door. She later said that "ruckus" was perhaps too strong a word. She said that she told the tenant that she and her guests should move their party elsewhere.

Analysis

The difficulty faced by the tenant is that her roommates were the landlord's daughter and the daughter's friend. Although the landlord was not present on March 13th and any information that he received with respect to the events that took place was based on hearsay, he adopted without reservation the version of events given by his daughter and her friend and room-mate. The daughter and room-mate did not testify at the hearing. The landlord's testimony and written statements and letter to the tenant are based on hearsay information related to him by his daughter, her room-mate and his wife. I accept and prefer the direct testimony given by the tenant concerning the events on March 13th. I do not accept the hearsay evidence that the tenant was hosting a drinking party and I find that the tenant was justified in her decision to move from the rental unit on short notice due to the hostile living conditions that she faced and out of concern for her own safety.

I deny the landlord's claim for loss of revenue for April. I find that the landlord has not provided convincing evidence that the rental unit was in need of cleaning after the

tenant departed. The landlord's claim for cleaning costs is dismissed without leave to reapply.

Conclusion

I have determined that the landlord is not entitled to a monetary award for loss or rental income or for an award of cleaning costs. The landlord is not entitled to an order authorizing him to retain the tenant's security deposit. The landlord's application is dismissed without leave to reapply.

The tenant requested that her security deposit in the amount of \$275.00 be returned to her by the landlord. Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenant's security deposit; I so order and I grant the tenant a monetary order in the amount of \$275.00. This order may be registered 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: August 29, 2014

Residential Tenancy Branch

