



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC MNSD O F

Preliminary Issues

The Tenant submitted an amended application for Dispute Resolution and evidence on July 17 and 18, 2014 which indicates he vacated the property as of June 30, 2014. As the Tenant had vacated the unit there is no need to dispute the 1 Month Notice to end tenancy issued for cause and that request was withdrawn.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on June 5, 2014, and amended on July 18, 2014, by the Tenant, to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of double his security deposit; for other reasons, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the scheduled teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord affirmed that she had received the documents submitted into evidence by the Tenant. The Tenant confirmed receipt of the Landlord's evidence and argued that it should not be considered because it was not received until mailed until July 18, 2014 and was not physically received by him until Monday July 21, 2014.

The *Residential Tenancy Branch Rules of Procedure 3.5 and 4.5* stipulate that evidence must be served on the other party a minimum of 5 days prior to the hearing, as defined in the *Residential Tenancy Branch Rules of Procedure*.

Based on the dates the Landlord served her evidence, and after careful consideration that the Tenant did not amend his application until July 18, 2014, I accept all of the

Landlord's evidence, in accordance with the *Residential Tenancy Branch Rules of Procedure #11.5*.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on February 1, 2002. The Tenant was required to pay rent of \$1,381.66 and on December 22, 2001 the Tenant paid \$472.50 as the security deposit. The Tenant was served a 1 Month Notice for cause on June 12, 2014 and vacated the unit by June 30, 2014. The parties attended the move in condition inspection on January 26, 2002 and the move out inspection on June 30, 2014. The Tenant provided the Landlord with his forwarding address by email on July 4, 2014. The rental unit is a multi level townhouse or row house and is the last unit in the complex, with a front and back door. The complex does not have private yards and all outside areas were described as being common areas.

The Tenant has filed seeking compensation of \$2,689.00 which includes the return of double his security deposit of \$895.00 (2 x \$472.50) plus \$1,794.00 as compensation for 39 days of loss of the value of his tenancy, calculated at \$46.00 per day.

The Tenant testified that he lost the quiet enjoyment of his rental unit because tenants in the 3rd townhouse down from the Tenant, (two townhouses were in between this unit and the Tenant's unit) had installed a surveillance camera (hereinafter referred to as the camera), and were viewing and recording the Tenant and his family coming and going from their rental unit.

The Tenant argued that he had requested the Landlord have those tenants reposition the camera so it was not monitoring his entrance doors and access (laneway) to his rental unit. When the Landlord refused to make those tenants move the camera the Tenant said he contacted the police in May, 2014, and requested that they attend the other unit and determine if the camera should be removed.

The Tenant stated that the police attended and that the officer said he was not an expert on the operation of the camera. The Tenant said that the police officer told him that the camera was allowed to stay in the unit, despite the Tenant's assertion that it contravenes the *privacy act* and the *Residential Tenancy Act*.

In support of his claim for the return of double his deposit the Tenant argued that he had not received the balance owed on his deposit (\$472.50 less the agreed upon \$50.00), therefore he was claiming double.

The Landlord testified that a cheque in the amount of \$486.73 was mailed to the Tenant from their head office on approximately July 10, 2014. Therefore, they should not be required to pay double the deposit.

The Landlord submitted that this is a case of two tenants not getting along. She has received multiple complaints from both tenants over the year and has managed each of them.

The Landlord confirmed that the other tenants had installed the security camera for their own protection from the Tenant's son. She pointed to her evidence which supports that the Tenant's son had been arrested due to his actions against the other tenants. She argued that the camera is located inside their rental unit and is pointed straight ahead out the front of their unit, out to the common areas, and not pointed directly at the Tenant's unit. The police have attended and confirmed that the tenants can keep the camera; therefore, the Landlord should not have to pay this Tenant for any alleged loss.

In closing, the Tenant stated that he has knowledge about these cameras and argued that even if the camera is pointed straight ahead it still records traffic in the pathway to his rental unit, and everything in between.

Analysis

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Upon review of the Tenant's submission, and when considering all of the events pertaining to this tenancy, I find that the Landlord has not breached section 28 of the *Act*. I make this finding in part, because the Landlord had the duty to manage the quiet enjoyment of all tenants in this complex, which was done, in accordance with police consent, to ensure the other tenant was protected from actions being conducted by this Tenant's son. Accordingly, I dismiss the Tenant's claim for monetary compensation for loss of quiet enjoyment, without leave to reapply.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the tenancy ended June 30, 2014; however, the Tenant did not serve the Landlord his forwarding address until July 4, 2014. Therefore, the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 19, 2014. The Tenant filed seeking double his deposit on July 18, 2014.

The Landlord testified that the Tenant's security deposit, less the agreed upon \$50.00, was returned to him by mail on approximately July 10, 2014.

Based on the above, I find that the Tenant filed his application prematurely, and based on the Landlord's submission they have complied with Section 38(1) of the *Act*. Accordingly, I dismiss the Tenant's claim for the return of double his deposit. In the event the Tenant does not receive the deposit cheque, he will have liberty to reapply.

The Tenant has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

Conclusion

I hereby dismiss the Tenant's claim, as noted above.

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: July 30, 2014

Residential Tenancy Branch

