



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, FF
 Tenants: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The original hearing was conducted via teleconference and was attended by the tenant's agent; the landlord and the landlord's agent. The reconvened hearing was attended by the tenant; the landlord and his agent.

The tenant's Application was originally set to be heard on March 17, 2014. The original hearing was attended by the tenant's agent and the landlord. During that hearing questions arose regarding the service of the tenant's Application to the landlord and the tenant's agent had no firsthand knowledge of the service or the date it occurred. As a result, I adjourned the hearing to a time that would allow the tenant to attend the hearing.

I also note that the landlord had submitted an Application for Dispute Resolution on March 11, 2014 on related matters and as I had already adjourned the hearing for the tenant's Application I requested that the landlord's Application be scheduled to be heard at the same time as the tenant's.

At the reconvened hearing the tenant testified that she had served the landlord by registered mail on November 26, 2013. However, the tenant could not provide a tracking number as confirmation of this statement. She stated that she had submitted the receipt to the Service BC office where she had submitted her Application. I note that no such receipt was on file and no record was made that she had submitted any additional evidence after filing her original application and evidence.

I allowed the tenant an opportunity to submit confirmation of this service by registered mail from Canada Post directly to me by fax no later than the end of business on August 14, 2014. I provided the tenant with my fax number. The tenant submitted a copy of her registered mail receipt dated November 29, 2013 and confirmed tracking information indicates the landlord signed for and received the registered mail on December 3, 2013

The landlord submits that he had been out of the country from December 8, 2013 until March 8, 2014 and that he did not receive any registered mail from the tenant. He states that in fact he had received the tenant's hearing documents by attending the dispute property after his return to Canada and that it was found in the mailbox, he does not recall seeing any type of stamp on the package.

Based on the tenant's receipt and tracking information provided I find the landlord did receive the tenant's Application for Dispute Resolution hearing package on December 3, 2013. As a result, I find the landlord had received the tenant's forwarding address on December 3, 2013

I also note that the tenant indicated during the hearing that she has a video of the walk out inspection with the landlord's wife but that she just discovered it a few days ago. As the tenant had submitted her Application on November 26, 2013 and this hearing was adjourned since March 17, 2014 I find the tenant had an excessive amount of time to submit any relevant evidence and I did not allow her to submit this evidence.

In addition, the landlord indicated that he had photographic evidence of the condition the tenant left the rental unit but that he did not submit it because he was rushed in trying to submit his Application before the March 17, 2014 hearing. I noted that the landlord's Application was original scheduled for a June 4, 2014 and he had an opportunity to submit evidence actually up until just before this hearing which he did not do. I did not allow the landlord to submit any additional evidence.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for compensation or monies owed; for double the amount of the security deposit and pet damage deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 49, 51, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began in November 2012 with rent due on the 1st of each month and that a pet damage deposit of \$150.00 and a security deposit of \$300.00 were paid. The tenant submits that rent was \$600.00 but the landlord believes that rent was \$650.00.

The tenant first testified that she moved out at the end of May 2013; she then stated she moved out in accordance with the notice to end tenancy she received. When I

questioned her as to which notice, as she had been issued two, she originally stated that she moved out on the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent (May 25, 2013) and then she stated she moved out on the effective date of the 2 Month Notice to End Tenancy for Landlord's use (June 15, 2013).

The landlord testified that she moved out on June 30, 2013. In response the tenant stated that she most likely moved out of the rental unit after she was told by the "landlord tenancy act" that she was entitled to a free month because of the landlord's 2 Month Notice. She eventually confirmed it was likely June 30, 2013.

The tenant submits that she provided the landlord's wife with a piece of paper on the final day of the tenancy with her forwarding address. The landlord submits that he did not receive any address at all from the tenant until he received her notice of hearing documents on March 8, 2014.

The landlord submits that the unit required substantial cleaning (\$230.00) and linoleum and carpet replacement (\$630.00), receipts were submitted into evidence. The landlord provided no evidence of the condition of the rental unit at either the start or the end of the tenancy. The tenant disputes these claims by the landlord. The tenant submits she has videotape of a walk through at the end of the tenancy, however she did not submit it into evidence.

The tenant seeks return of her security deposit and pet damage deposit in an amount totalling \$450.00.

The tenant seeks equivalent to 3 months rent as compensation for the landlord renting to her a rental unit that was not a legal rental unit according to local bylaws. The tenant submits that the landlord knowingly rented her a suite that was not compliant and as such she was forced to move and upset her home. The tenant also seeks compensation in the amount of \$200.00 for moving costs.

Both parties submitted into evidence a letter from local authorities dated March 6, 2013 confirming that the landlord was in contravention of local bylaws regarding secondary suites. The letter refers to an inspection completed at the property on February 28, 2013.

The tenant submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective vacancy date of June 15, 2013 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord.

When asked if the tenant paid rent for the last month that she was in the unit (June 2013) the tenant submits that she could not remember. She states that if June 2013 was the last month that she was there and it was the month that she should have received as free then she did not pay rent, but she was not certain whether or not she did pay rent. The landlord testified the tenant did not pay rent for June 2013.

The tenant submits the landlord was not living in the rental unit, she was not sure who was living in it and that it could have been a relative who was living there. The landlord's agent explained that while he has not been living in the unit his father, the actual owner of the property and the party named as landlord in these Applications has been living in the unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In regard to the landlord's claim I note that the landlord has the burden to provide sufficient evidence to establish his claim. As the landlord has provided no evidence at all as to the condition of the rental unit at the beginning or end of the rental unit and the tenant disputes the condition, I find the landlord has failed to provide sufficient evidence to establish the tenant has failed to meet her obligations under Section 37 of the *Act*. I therefore dismiss the landlord's Application in its entirety.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Despite the tenant's assertion that she provided the landlord with her forwarding address to the landlord's wife on the last day of the tenancy the landlord disputes this claim. As the burden is the tenants to provide evidence to support her claim I find that she has failed to establish she provided her forwarding address on June 30, 2013.

Despite the landlord's claim that he first received the tenant's forwarding address when he received her Application for Dispute Resolution on March 8, 2014 I found above that the landlord received the tenant's forwarding address on December 3, 2013.

As a result, I find the landlord had until December 18, 2013 to file his Application for Dispute Resolution to claim against the deposit to be compliant with Section 38(1) of the *Act*. However, the landlord did not file his Application for Dispute Resolution until March 11, 2014. Therefore, I find the landlord has failed to comply with Section 38(1) of the *Act* and pursuant to Section 38(6) the tenant is entitled to double the amount of the security deposit.

Section 51(1) of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement.

Section 51(2) states that if the landlord fails to use the rental unit for the stated purpose in a notice given under Section 49 or taken reasonable steps to do so the tenant is entitled to compensation in an amount equivalent to double the amount of rent under the tenancy agreement.

While there is no evidence before me that the landlord was aware that the rental unit was not allowed under local bylaws prior to March 6, 2013 I find the tenant has failed to provide any evidence that would support a claim for compensation based on this issue. As a result I dismiss her claim for moving costs in the amount of \$200.00.

And while there is no basis to grant the tenant compensation in the amount equivalent to 3 months rent because of this issue, I note that the landlord did issue a 2 Month Notice to End Tenancy for Landlord's Use of Property as per Section 49. As a result, I find the tenant is entitled to compensation equivalent to 1 month's rent, pursuant to Section 51(1) and that she received this compensation when she failed to pay rent for the month of June 2013.

As to the tenant's claim that the landlord has not moved into the rental unit, I find that she has provided no evidence to support this claim. In fact, in her own testimony she indicated that it may be occupying by a family member. As the 2 Month Notice indicated that it was to be occupied by the landlord; his spouse; or a close family member, I find the tenant has failed to provide any evidence to confirm that it was not occupied by any of these members of the landlord's family. I dismiss this portion of the tenant's Application.

Conclusion

Based on the above, I find the tenant is entitled to the return of double the amount of her security (\$300.00) and pet (\$150.00) damage deposit for a total amount of \$900.00. I also grant the tenant \$25.00 of the \$50.00 fee paid by the tenant for her application as

she was only partially successful. I, therefore, grant the tenant a monetary order pursuant to Section 67 in the amount of **\$925.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 18, 2014

Residential Tenancy Branch

