



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Amendments where noted as **

Dispute Codes: MNSD RR MNDC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38;
- b) An Order for a refund of rent pursuant to section 65 for promises not kept and cleaning labour costs; and
- c) To recover the filing fee for this application.

This hearing also dealt with an application by the landlord pursuant to the Act for orders as follows:

- d) A monetary order for rent for June 2014 as the tenant gave short notice to end her tenancy;
- e) A monetary order for damages to the property; and
- f) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and agreed they had each received the other's Application for Dispute Resolution by registered mail. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she is entitled to the return of the security deposit according to section 38 of the Act and to recover the filing fee for this application?

Has the landlord proved on the balance of probabilities that she is entitled to a monetary order for one month's rent plus damages and to recover the filing fee for this application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. It is undisputed that the tenant paid a security deposit of \$375 plus a ****pet damage deposit of \$125**** in April 2014 and rent was \$750 a month on a month to month tenancy. It is undisputed that this was a verbal agreement and no rental documents were signed. The tenant said she gave Notice to end her tenancy on May 5, 2014 to be effective June 5, 2014 and vacated the unit on May 9, 2014 due to its poor condition. She sent her forwarding address and the key back by registered mail on May 15, 2014. The tenant's deposits have never been returned and she gave no permission to retain any of it. The landlord filed her Application for Dispute Resolution on May 30, 2014.

The landlord said she retained the deposits for the tenant owes rent for June 2014 as her Notice to End her tenancy would not legally be effective until June 30, 2014; the landlord said she was unable to re-rent the unit until July 1, 2014 and thus suffered rental loss for June 2014. The landlord requests \$750 for June. She also stated that the tenant was responsible for some damages to the unit. She claims \$117.60 for carpet cleaning for she said the tenant's pet had urinated on the carpet and she also claims \$22.36 for a towel bar replacement that she said the tenant had pulled off the bathroom wall. The tenant denies responsibility for these charges as she says the carpet was stained already, her pet was in a contained kennel for the two days she was there and the towel bar was off the wall when she arrived.

There was much dispute between the parties concerning a condition inspection report and their communications by phone. The landlord was taking an ocean vacation and tried to organize things before she left. She says she arranged with the tenant to do a move-in report on May 1 but the tenant cancelled this, then one was arranged for May 4 but the tenant left early to return to work several hours away and was not present when her agent attended the unit. She says a friend lived upstairs in her unit and was her agent while she was away, she says she informed the tenant of this by phone, her agent posted notices to do a move-in and move-out report but the tenant never responded and never contacted her agent but just emailed her while she was on the ocean to say she was moving out. The tenant denies these facts. She says that a move-in report was not mentioned but only occupancy on May 1 which she cancelled to May 4, the landlord never told her the man upstairs was her agent but only that he was a friend looking after her dog while she was away and she received no notices from him regarding a move-in inspection. She complains of the poor condition of the unit at move-in, the lack of cleaning, some appliances not working, some goods of the landlord still stored in the unit and no entrance light. She said no one met her and the upstairs person never came and introduced himself to her. She provided some letters from

relatives and one from her witness who had viewed the suite before move-in. The landlord said the suite was clean, all appliances were tested and worked but they did miss the oven cleaning. She provided move-in and move-out reports signed by her agent

In evidence are photographs from both parties, receipts, many emails, unsworn statements from third parties. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

The Residential Tenancy Act provides:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit. (6) If a landlord does not comply with subsection (1), the landlord (a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)). I find in this case that the landlord filed her Application to claim against the deposits within the fifteen days allowed in the legislation. Therefore, the doubling provision does not apply and the landlord's claim will be considered against the deposits.

I find it is undisputed that the tenant agreed verbally to a month to month tenancy commencing May 1, 2014. I find she gave a Notice to End the tenancy on May 5, 2014 and returned her key on May 15, 2014 by registered mail (deemed received on May 20, 2014). Although she stated in her Notice that her tenancy would end on June 5, 2014

pursuant to her one month Notice, I find that section 45(1) of the Act states that this Notice would not be effective until a month after the landlord received the Notice and the day before the day in the month that rent is due. Pursuant to section 45, then, the earliest effective date of the tenant's Notice would be June 30, 2014. Although the tenant contended she only occupied the unit for a few days, I find section 16 of the Act states her rights and obligations commenced as soon as she entered the tenancy agreement, whether or not she ever occupied the unit. I find the landlord's evidence credible that she suffered one month rental loss due to the short notice so I find her entitled to a monetary order for \$750.00 for rental loss.

While the tenant contended that she had to move because of the poor condition of the unit and should not be responsible for further rent and may even be entitled to a rent rebate for May, I find communications between her and her witness at the time indicate he had inspected the unit and taken her on a video tour in May before she agreed to rent the unit. However, I find that at least one item, the oven, was not cleaned as admitted by the landlord; I find this devalued the tenancy and did not give the tenant what she bargained for and I grant the tenant a rent rebate of \$100 for May. This would not apply to rent for June 2014 as the oven was cleaned on May 9, 2014 after she moved.

In respect to the landlord's claim for damages, the onus is on her to prove on a balance of probabilities that this tenant did the damages, that they were beyond reasonable wear and tear and the cost to repair. I find the documentary and oral evidence submitted do not meet the onus. I find insufficient information to support her claim that the tenant was informed of the existence of her agent or that appointments were made to do a condition inspection report. Section 33(2) states there is an obligation for the landlord to post in a conspicuous place or give to the tenant in writing, the name and contact number for emergency repairs. I find no evidence that the landlord did this and insufficient evidence that she had supplied even verbally her agent's name and contact information.

Although the landlord maintains that the tenant could have called her telephone number and the agent would have answered, I find the tenant's explanation more credible that she knew the landlord was on an ocean voyage and presumed she could only contact her by email. I find the condition inspection reports provided were done after the tenant says she vacated, not at move-in. There appears to be no documentary evidence of the condition at the move-in date of May 4, 2014, there is no receipt to show the carpets were professionally cleaned before move-in (and the previous tenants had only vacated a few days before), the tenant denies this damage and provided some photographs to show stains existed on the carpet at move-in. Therefore, I find insufficient evidence that

the tenant damaged the towel bar or that the dog urinated on the rug. I dismiss the landlord's claim for compensation for damages.

Conclusion:

I find the landlord entitled to a monetary order as calculated below and to recover filing fees for this application. I find her entitled to retain the security and pet damage deposits to offset the amount owing.

I find the tenant entitled to a rent rebate of \$100 off May's rent and to recover filing fees for this application as I find it had some merit.

Calculation of Monetary Order

Rental loss for June 2014	750.00
Filing fee	50.00
Less rent rebate for May 2014	-100.00
Less deposits (no interest 2014)	**500.00
Less filing fee to tenant	-50.00
Monetary Order to Landlord	**150.00

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: September 16, 2014

Residential Tenancy Branch

