



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order and an order compelling the landlord to return her security and fob deposits. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on April 15, 2013 and ended on April 30, 2014. They further agreed that rent was set at \$3,500.00 per month and that at the beginning of the tenancy, the tenant paid a \$1,750.00 security deposit and two \$100.00 fob deposits. They further agreed that at the end of the tenancy, the tenant provided her forwarding address in writing on or about May 14 and that she returned one of the 2 fobs.

The tenant seeks the return of her security and fob deposits. The landlord testified that he did not return the deposits because the tenant did not give him one full month's notice that she was vacating the rental unit.

The tenant testified that she was harassed by the landlord and his agents throughout her 12 month tenancy and said that after she signed the tenancy agreement, she was made aware that the suite had been advertised for sale. She claimed that early in the tenancy, the realtor asked her on 3 occasions to allow her to hold an open house and the tenant refused. After that, the realtor started booking continual showings, at times bringing as many as 10 people to see the unit. The tenant stated that frequent showings took place throughout the tenancy and prevented the tenant from enjoying the unit.

The tenant further testified that on June 3, she received a telephone call from the landlord at 2:45 a.m. in which he screamed at her for not paying her rent on time. She claimed that on several occasions, the landlord would phone to arrange to meet with her at the rental unit and would arrive with another party or sometimes several people, which made the tenant feel uncomfortable.

The tenant claimed that she told the landlord several times that she was unhappy with the unit being shown so frequently and to so many people and despite her complaints, the showings continued. She acknowledged that she made every effort to accommodate the landlord in order to maintain a good relationship with him.

The landlord acknowledged that he may have telephoned the tenant at 2:45 a.m., but said that if that event occurred, he was outside the country at the time and had forgotten to take the time difference into account. He denied having screamed at the tenant. The landlord argued that he and his agent always provided 24 hours notice of entry and the tenant always agreed to the showings.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the date the tenancy ends and the date the tenant provides a forwarding address in writing, the landlord must either return the security deposit in full or file an application for dispute resolution with the Residential Tenancy Branch to retain the deposit. In this case, the landlord did neither. Section 38(6) provides that if a landlord fails to comply with s. 38(1), he must pay the tenant double the security deposit. While the landlord may believe that the tenant owes him money, he was not entitled to arbitrarily keep the deposit. I find that the tenant is entitled to recover double her \$1,750.00 deposit and I award her \$3,500.00.

As the landlord acknowledged that the tenant returned one fob and as the landlord is not entitled to apply the fob deposit to any amounts owing without the tenant's permission, I find that the tenant is entitled to recover the fob deposit and I award her \$1,000.00.

As for the tenant's claim for loss of quiet enjoyment, the tenant bears the burden of proving that the actions of the landlord or his agents caused her to lose quiet enjoyment. While the landlord and the realtor appeared to have shown the rental unit to prospective purchasers numerous times during the tenancy, it would appear that the tenant granted access on each occasion and I am not persuaded on the evidence that I have before me that the tenant raised objections to the landlord or at least in a way that clearly communicated that she was unhappy with repeated intrusions. Section 29(1)(a)

authorizes a landlord to enter a unit if the tenant gives permission at the time of entry. I find insufficient evidence to show that the landlord has breached his obligations under the Act and for that reason, I dismiss the tenant's claim for loss of quiet enjoyment.

As the landlord wrongfully withheld the security and fob deposits thereby requiring the tenant to file this application, I find that the tenant should recover one half of the \$100.00 filing fee paid to bring the application and I award her \$50.00.

Conclusion

The tenant has been awarded \$3,650.00 which includes double the security deposit, the fob deposit and one half of the filing fee. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial 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: October 08, 2014

Residential Tenancy Branch

