



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP MNR MNDC MNSD FF

Introduction:

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

- a) Compensation pursuant to sections 28 and 29 for loss of their peaceful enjoyment and the landlord's entrance to their home without proper notice;
- b) A monetary order or rent rebate pursuant to Sections 65 and 67 as compensation for facilities promised but broken or not provided and for cost of emergency repairs pursuant to section 33;
- c) Return of the unpaid portion of their security deposit doubled pursuant to section 38;
- d) Compensation for fees paid for the dispute procedure and translation; and
- e) An order to recover the filing fee pursuant to Section 72.

SERVICE

Both parties attended and the landlord agreed they received the Application for Dispute Resolution by registered mail sent on August 14, 2014. I find that the landlord is served with the Application according to section 89 of the Act.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord or their agent disturbed their peaceful enjoyment and did not give proper notice contrary to sections 28 and 29 of the Act?

Has the tenant also proved that facilities were promised but were broken or not provided?

Has the tenant also proved that they vacated in response to a request from the landlord to end their tenancy early with the promise of a return of rent for May 2014? Have they proved that they are entitled to a balance of security deposit refunded and if so, should it be doubled in accordance with section 38 of the Act?

If any or all of the above items are proven, is the tenant entitled to a monetary order or a rent rebate to compensate them and in what amount? Is the tenant entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The lease in evidence provides that the tenancy commenced in April 1, 2014 and was to terminate on May 31, 2014, rent was \$2800 a month and a security deposit of \$1400 was paid plus a furniture deposit of \$300 as it was a furnished unit.

This was a difficult hearing as both parties had to rely on interpreters or representatives to provide their oral evidence and their oral evidence was contradictory. Even the copy of the leases provided differed. The female tenant said that she visually inspected the unit before moving in but did not realize that the refrigerator and microwave did not work, there was inadequate bedding and they were told not to use one of the two bathtubs as it leaked water to the unit below. The landlord's son testified to the problems but he basically repeated what was said with some prompting. The landlord said she complained orally to the landlord but did not have anything in writing; she said there were text messages but she had not provided them in evidence, although she did provide text messages from the realtor to prove there was insufficient notice to enter their home for showings.

The tenant vacated on May 1st or 2nd and say they did this as a result of a conversation with the landlord in Iran. When they complained of the frequency of the showings and the threat of the realtor to change the locks if they could not be home to accommodate him, they said the landlord told them they could vacate and he would return May's rent to them through the realtor when they returned the keys. They returned the keys but then the landlord said he could not afford it and would pay them later.

The landlord's agent denied that the contents of the home had any problems; he said he inspected the appliances in September and they were all in good working order and were the original appliances. He said the tenants bought nothing for the home such as duvets and blankets. He denied that the landlord had written complaints from the tenants and said the rental was short term as the tenants were leaving again soon and they just left earlier because they were having personal problems. He said he had text messages from the landlord for the relevant periods but he had not submitted them in time for the hearing.

The tenants and landlord agree that \$1659 of the deposits was returned on May 29, 2014 to the tenants' bank account but the tenants' representative contended that this was not within the 15 days permitted by section 38 of the Act so should be doubled. The landlord contended that the tenancy was not legally ended until May 31, 2014. The tenants said they gave verbal notice to end their tenancy but not written notice. \$41 was deducted from the deposit for the hydro bill. The tenant contended this was included in rent and the landlord said it was not. The landlord's copy of the lease in evidence shows in section 3 (b) in what is included in rent an X in the 'Electricity' box is scratched out and 'NOT included' written beside it but outside the lines of the page. The tenant's copy shows the box is scratched out but has 'included' written within the lines of the page. The lawyer for the tenant said there appears to have been a miscommunication.

In evidence is a representative agreement from the landlord, two lease agreements differing in the electricity term, a hydro bill, a real estate listing, text messages from G., the realtor. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

The onus is on the tenant as applicant to prove on the balance of probabilities their claims. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must generally prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the landlord returned \$1659 of the deposits on May 29, 2014. Although the tenant's lawyer contended this was not within the 15 day limitation in section 38 of the Act, I find the tenancy did not end until May 31, 2014 although the tenants moved out early. Sections 44 and 45 of the Act state how a tenancy ends. This was a fixed term

tenancy and I find it could only end in accordance with section 45(2) (b). There was insufficient evidence of any material breach of the agreement (s. 45(3) that was not corrected after written notice as there is no evidence before me that the tenants communicated the problems to the landlord in writing and he failed to fix them after a reasonable time. Therefore, I find the majority of the security and furniture deposits were returned in time.

However, I find the landlord had no permission to withhold \$41 for hydro whether or not it was included. I find section 38 of the Act provides a landlord may only retain any of the security deposit if he makes an Application for Dispute Resolution or the tenant agrees to it. I find no evidence that the landlord has made an Application and the tenants says they never agreed to it. Therefore, I find the tenants entitled to \$82 refund of the security deposit (\$41 doubled by section 38 of the Act.)

I find insufficient evidence to support the tenants' claim for the return of May's rent. Although they state they moved out pursuant to a conversation with the landlord and giving the landlord proper notice, I find no written notice in evidence and the landlord denies any such promises. I dismiss this portion of their claim.

In respect to the disturbance of their peaceful enjoyment contrary to section 28, I find the weight of the evidence is that the tenants were subjected to seven showings without adequate 24 hour notice from the realtor. I find his text message to say he was bringing a locksmith at 7 p.m. to let him into the premises disregards the provisions of sections 28 and 29 of the Act. I find the tenants' evidence credible that this was very disruptive to their lives as they were told they had to leave the premises while he was there with clients (resulting in them sitting for long periods outside) and had to return at times to let him in. Section 28 protects the tenants' right to quiet enjoyment and section 29 restricts the landlord's (or his agent's) right to enter the premises to when permission is granted and/or a 24 hour notice is given. I find the landlord violated the tenant's rights. I find the tenants entitled to \$100 per incident for this unreasonable interference and disturbance of their peaceful enjoyment (total \$700).

I find insufficient evidence that there were broken appliances or inadequate bedding and furnishings or that the landlord was notified and refused to fix or replace them. I find the tenant inspected the unit visually before renting it and found no issue with it. The tenant provided no invoice for the repair of a bed or any for other items they claimed they purchased. The claim for the electricity refund of \$50 is moot for the doubling provision of section 38 is being applied to this charge. I dismiss this portion of the tenants' claims.

Conclusion:

I find the tenant is entitled to a monetary order as calculated below and to recover filing fees paid for this application. I dismiss the remaining portion of the tenants' claims other than as allowed above.

Calculation of Monetary Award:

Original Deposits	1700.00
Less amount returned in time per. S. 38	-1659.00
Balance	41.00

Double balance of deposit	82.00
Award for loss of enjoyment	700.00
Filing fee	50.00
Total Monetary Order to tenant	832.00

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: October 14, 2014

Residential Tenancy Branch

