



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BUILDING BLOCK PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants application for a Monetary Order to recover double the security and pet deposits; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The landlord's agent advised me there was an error in the spelling of the landlords agents last name. The parties did not raise any objections to the error being corrected and this has now been amended.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double the security deposit?

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on May 01, 2013 for a fixed term tenancy of one year. The tenant gave written Notice on January 27, 2014 to end the tenancy and vacated the rental unit on February 28, 2014. Rent for this unit was \$750.00 per month due on the 1st of each month. The tenant paid a security deposit of \$375.00 and a pet deposit of \$375.00 on May 01, 2013.

The tenant testified that she was misled when she rented the unit and signed a crime free addendum. The building had a drug and violent crime problem and as the tenant's daughter is autistic the tenant had to end the tenancy to keep her and her daughter safe. The tenant testified that she had complained to the landlord and the police about the activities going on in the building which included people leaving the doors open, domestic arguments and drug use. These problems contributed to the tenant not feeling secure in her unit. The tenant testified that the landlord did not do anything to resolve these problems so the tenant had to give notice to end the tenancy.

The tenant testified that she met the landlord's agent at the unit to do the move out condition inspection. The tenant agreed that she did sign the inspection report and gave the landlord permission on this report to keep the security and pet deposits. The tenant testified that she signed this report under duress and the tenant was afraid the landlord would engage a lawyer against the tenant.

The landlord testified that he was under the impression that the tenant and landlord had left on good terms. The landlord's agent testified that he had explained everything to the tenant prior to her signing the move out report and giving the landlord permission to keep the security and pet deposit. The landlord's agent denied that the tenant was

under duress to sign this report. The landlord testified that they were entitled to keep the security and pet deposits as the unit was not re-rented until April 01, 2014.

The tenant testified that a neighbour had told the tenant that the unit was re-rented a few days after the tenant had moved out.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 38(4) of the *Act* which states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,

I am satisfied from the evidence presented that the tenant did agree in writing that the landlord could keep the security deposit of \$375.00 and the pet deposit of \$375.00 to pay an obligation of the tenant. In this case it was the tenants obligation to pay rent for the unit for the balance of the fixed term or until the rental unit was re-rented. The tenant has the burden of proof to show that the unit was re-rented a few days after she moved out and has failed to meet the burden of proof.

A landlord only has to file an application to keep the security and pet deposit if the tenant has not agreed in writing that the landlord may keep the deposits. Therefore the tenants claim to recover the doubled portion of the deposits is dismissed.

I therefore find the landlords are entitled to keep the security and pet deposits to satisfy a loss of revenue and the tenant's application to recover the security and pet deposit is dismissed.

As the tenants claim has no merit I find the tenant must bear the cost of filing her own application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 02, 2014

Residential Tenancy Branch

