



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit, for compensation for loss of quiet enjoyment and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issue to be Decided

Did the tenant provide the landlord with her forwarding address in writing? Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started in January 2013 and ended on May 31, 2014, pursuant to a notice to end tenancy for landlord's use of property. The monthly rent was \$525.00. At the start of the tenancy, the tenant paid a security deposit of \$200.00. There was no written tenancy agreement. The rental unit was located in the basement of the house and the landlord lived upstairs.

On May 21, 2014, the tenant provided the landlord with a written note containing her forwarding address and 10 days notice to move out. The landlord stated that he received a note from the tenant but was unable to read it because of language issues. The tenant filed a copy of the note into evidence.

The tenant stated that through the tenancy, the landlord entered her rental unit at will without providing notice, opened her refrigerator and took some food during one visit and sat on the tenant's sofas during another visit. The tenant also complained that the landlord denied her the use of the dryer and restricted her use of the washing machine.

The tenant stated that during the tenancy the landlord's father passed away and his family members stayed over at the home for approximately two weeks.

During this time, the landlord's family members used the washroom in the renal unit and the tenant was instructed to refrain from eating meat or storing it inside the refrigerator. The tenant stated that out of respect she cooperated with the landlord during their time of mourning.

The tenant also complained about the landlord opening her mail, leaving her with a broken oven for two months and ignoring her complaints of a faulty lock which left her locked out on occasion. The tenant is claiming compensation in the amount of \$1,698.13 for loss of use of the facilities and \$882.88 for the loss of quiet enjoyment. The landlord denied all allegations.

The landlord stated that he returned the deposit to the tenant's son in cash but did not obtain a receipt from the tenant's son. The tenant stated that she did not receive the security deposit.

Analysis

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.

In this case the landlord stated that he had returned the security deposit to the tenant's son in cash but did not have a receipt as proof. The tenant denied having received the security deposit. The testimony of the parties was contradictory and therefore in the absence of proof of having returned the security deposit, I find that the landlord failed to return the security deposit to the tenant,

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. In this case, I accept that the tenant gave the landlord her forwarding address on May 21, 2014, prior to moving out on May 31, 2014.

I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of the end of tenancy and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit. Accordingly, the landlord must return \$400.00 to the tenant.

Based on the testimony of both parties, I find that by not applying for dispute resolution during the tenancy, the tenant took no steps to seek a solution to her complaints against the landlord. However, I find the tenant's testimony to be credible and I accept that she did suffer a loss of quiet enjoyment during the tenancy.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly I award the tenant a minimal award of \$100.00 for the inconvenience she endured during the tenancy.

Since the tenant has proven her case, I award her the recovery of the filing fee of \$50.00.

Overall the tenant has established a claim of \$400.00 for the return of the security deposit, \$100.00 for compensation and \$50.00 for the recovery of the filing fee for a total of \$550.00. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$550.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$550.00**.

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: November 06, 2014

Residential Tenancy Branch

