



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP, MNR, MND, FF

Introduction

In the first application by application date, the landlord seeks a monetary award for unpaid December 2014 rent of \$735.00, a late fee of \$25.00 and liquidated damages of \$250.0.

In the second application the tenant seeks to recover her \$367.50 security deposit, moving and storage costs claiming she had to move because of the state of the premises and for return of personal property.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either party is entitled to any of the relief requested?

Background and Evidence

The rental unit is bachelor suite on the main floor of a house. The landlord rents out four other suites in the home.

The tenancy started in February 2014 and ended when the tenant moved out on November 30, 2014. It was for a fixed term to January 1, 2015. The monthly rent was \$735.00. The landlord holds a \$367.50 security deposit.

The tenant purported to end the tenancy by a notice letter dated November 21, 2014, saying she would leave by November 23, 2014. The letter cites three reasons: 1) she felt “discriminated, abused and harassed” by the landlord’s treatment of her, 2) she was having financial difficulties, and 3) the landlord had not fixed a mould problem.

The parties met on November 30 at about 1:00 o’clock in the afternoon to conduct a move out inspection. The landlord provided a recording of their brief conversation on that date. It notes that the landlord felt the tenant had not yet moved her belongings out of the suite. He informed her that he had another appointment shortly and to just leave

the keys when she left. The tenant said she would. The conversation was brief. The landlord left. No inspection was done then or later.

The tenant's daughter, who helped her mother move later that day, testified that at that time there were a tricycle, a "scooter" and her mother's luggage in the unit.

At hearing the tenant also complained that the premises were noisy and that the cost of natural gas was too high for her.

Analysis

The first question to be answered is whether or not the tenant had sufficient reason to end the tenancy before the end of the fixed term tenancy she had agreed to.

To justify a tenant's repudiation of a tenancy there must be a fundamental breach of the rental agreement. That is, a breach of a term of the agreement so essential to the relationship of landlord and tenant, that had it been discussed at the time the contract was negotiated, both sides would have agreed that a breach would end their relationship.

In this case I find the tenant has not established such a breach.

On the competing evidence I am not able to conclude the landlord was harassing or abusive in his relationship with the tenant. He may have been, but it has not been proved on a balance of probabilities at this hearing.

The tenant's financial situation is not a lawful ground for unilaterally ending a tenancy.

The allegation of mould has not been established on the evidence. There is no indication of the extent of the alleged mould or that it is of a harmful variety.

The fact that the rental unit was noisy is not a ground for repudiating the tenancy. If the noise is unreasonable noise caused by other tenants, this tenant's proper recourse is to report it to the landlord and demand that he take the necessary steps to cause it to cease.

The tenant was not entitled to end the tenancy early. She is liable for the December rent of \$735.00 and I award that amount to the landlord.

The tenant also claims for return of personal property. No evidence was given regarding that claim and so I dismiss it.

The tenant did not dispute the landlord's entitlement to a \$25.00 late fee or \$250.00 in liquidated damages for the cost of re-renting. The tenancy agreement contains clauses justifying both amounts and I award them to the landlord.

Conclusion

The tenant's application is dismissed.

The landlord is entitled to a monetary award of \$1010.00 plus the \$50.00 filing fee. After credit for the tenant's security deposit, the landlord will have a monetary order against the tenant for the remainder of \$692.50.

The landlord was of the view that since the tenant failed to be ready for the move-out inspection, the security deposit had been forfeited to him and should not be accounted against the monetary award made after this hearing.

Section 36 (1) of the *Residential Tenancy Act* provides that the tenant loses the right to return of a deposit if she fails to attend an inspection after being given two opportunities to do so. The evidence indicates that the tenant indeed attended. On the evidence before me, the premises were in a vacated condition. The landlord could have and should have conducted the scheduled inspection.

In any event, and as noted at hearing, Residential Tenancy Policy Guideline 17 "Security Deposit and Setoff" makes it clear that even if a tenant loses the right to return of the deposit under s. 36 (1), it is still to be accounted for in any award to the landlord.

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: January 30, 2015

Residential Tenancy Branch

