



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an order that the landlords comply with the *Act* pursuant to section 66;
- a monetary order for damage or loss pursuant to section 67;
- an order that the landlords return of all or a portion of the tenant's security deposit pursuant to section 67; and
- an other type of compensation or relief under the *Act*.

The landlords did not attend this hearing, although I waited until 1:53 p.m. in order to enable the landlords to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to her application.

Preliminary Matter – Service of Documents

The tenant testified that she attempted service of the Application for Dispute Resolution package to the landlords on August 2, 2014 by registered mail. That mail was returned to the sender. The tenant testified that the tenant and the landlords live on a small island and the landlords have not moved. She testified that the post office would have advised her if the landlords had moved. The tenant testified that, out of an abundance of caution, she attempted service of the Application for Dispute Resolution package again by registered mail on January 24, 2015. Again for this mailing, the tenant provided receipts and tracking numbers from Canada Post. The Canada Post information provided indicates that, "Item will be returned to sender if not collected in 10 days". The tenant provided evidence of separate mailings to each landlord on both the August date and the January date.

Residential Tenancy Policy Guideline No. 12 addresses proper service of documents as required under the *Act*. The Guideline states that,

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a Dispute Resolution Proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

The Guideline also states that an application for Dispute Resolution must be served on the respondent in one of three ways, one of those ways being to send it by registered mail. When a tenant is serving a landlord by registered mail, the address for service must be the address where the landlord resides at the time of mailing or where the landlord carries on business. In this case, the tenant testified that the landlords lived on the residential premises where they rented a suite to her. Based on the sworn testimony of the tenant at this hearing, the landlords both reside and carry on business at the address where she has sent the dispute resolution hearing package. The tenant provided sworn testimony that she believes the landlords still reside at the address provided on the residential tenancy agreement.

In the case of service by registered mail, the refusal of a party to accept or pick up the registered mail does not override the provisions of the act regarding deemed service. Where registered mail is refused or not picked up, service continues to be deemed to have occurred on the fifth day after mailing of the documents. Based on the evidence submitted by the tenant and in accordance with sections 89(1) and 90 of the *Act*, I find that the landlords were both deemed served with the registered mailings of the dispute resolution packages on August 7, 2014, 5 days after the original registered mailing by the tenant.

Issues to be Decided

Is the tenant entitled to an order that the landlord comply with the *Act*?

Is the tenant entitled to a monetary order for damage or loss?

Is the tenant entitled to an order that the landlord return of all or a portion of the tenant's security deposit?

Is the tenant entitled to any other relief or compensation under the *Act*?

Background and Evidence

This 6 month fixed term tenancy began on October 1, 2009 and, after the conclusion of the 6 months, continued on a month to month basis. The tenant provided a copy of the

written tenancy agreement between the parties. The tenant testified that she paid the landlords a security deposit in the amount of \$525.00 on October 1, 2009. The documentary evidence provided by the tenant supports this testimony. The tenant testified that she no longer resides in the rental unit. As the tenancy has now ended, she withdrew her application to order the landlords to comply with the *Act*.

The tenant testified that the tenancy ended August 10, 2014. The tenant testified that \$68.00 of her security deposit was not returned to her in full and in accordance with the *Act*. She stated that she agreed that the landlords could deduct \$50.00 from her security deposit and that the landlords would return \$475.00 of the \$525.00 security deposit. The tenant testified that only \$407.00 of her security deposit was returned to her. The tenant claims that, at some point after the end of her tenancy, she was advised by the landlords that they were retaining an additional \$68.00 from her security deposit because she remained in the rental unit for 2 extra days after the official end of her tenancy.

The tenant applied for the return of \$68.00 from her security deposit, currently held by the landlords. The tenant submitted as documentary evidence a copy of a mutual agreement to end tenancy, titled a "settlement agreement" and prepared by the parties themselves that includes the following provisions for the end of tenancy;

- the landlords will permit the tenant to continue to live in the rental unit until noon on Friday, August 10, 2012
- the tenant will move out of the rental unit on or before noon on Friday, August 10, 2012
- the tenant will perform a thorough cleaning of the rental unit on or before noon on Friday, August 10, 2012
- the parties will attend at the rental unit at 11:30 a.m. on Saturday, August 11, 2012 for the move-out condition inspection
- the tenant will pay \$306 to the landlords for use and occupancy of the rental unit until noon on Friday, August 10, 2012

The tenant testified that the parties had agreed verbally, further to the written settlement agreement that any further days of residence in the rental unit by the tenant would be subject to a per diem or per day charge. The tenant testified that she only resided in the rental unit until August 10, 2012. She submitted evidence showing that she paid for a room in a bed and breakfast on August 10 and 11, 2012. The tenant also testified that she was still attending to the unit and cleaning the rental unit until approximately August 12, 2012. She testified that the person within the community responsible for recycling came to take away her recyclables on August 12, 2012.

The tenant also seeks compensation for matters that arose during the course of her tenancy. The tenant testified that the door to her rental unit had no locks for thirty three months of her tenancy. She testified that having no locks was a particular concern for her for two weeks in August 2012.

Analysis

With respect to the application for monetary compensation for having no locks during her tenancy, the tenant testified that she lives in a small community and it was not until August 2012 that this became a pressing concern. In her documentary evidence, the tenant's first request to the landlords for the installation of locks was submitted in June 2012. The tenant has an obligation to mitigate any monetary or rights-based claim against the landlords. The tenant requested locks on her residence after three years of tenancy.

Given the testimony of the tenant, the matter of locks was not a concern to her for the majority of her tenancy. This tenancy ended in August 2012. The tenant has not provided supporting evidence that, on a balance of probabilities, the tenant suffered disruption as a result of the lack of locks. There is a requirement under the *Act* and the Residential Tenancy Policy Guidelines that a person claiming loss or damage minimizes, or mitigates, that loss as much as possible. The tenant did not take steps to minimize any loss or damage she alleges. I find that the tenant is not entitled to a monetary award with respect to locks on her rental unit.

Residential Tenancy Policy Guideline No. 29 provides that the tenant may agree in writing at the end of the tenancy that the landlord may retain all or part of the security deposit. In this case, the tenant agreed to an end of tenancy with specific terms. She also testified that she agreed to a further reduction of \$50.00. Finally, she testified that there was agreement between the parties that, if the tenant did not leave the residence by August 10, 2012, there would be a per diem rental amount charged by the landlords. It is her position that she had vacated the unit on August 10, 2012.

Policy Guideline No. 29 also provides that an arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the *Act*.

With respect to the tenant's application for return of the remainder of her security deposit, the settlement agreement between the parties clearly states an end to tenancy

of August 10, 2012. While the tenant may have paid for another residence after that date, her sworn testimony is that she continued to access the rental unit to clean it. Based on this evidence, I find the tenant remained in possession of the rental unit after the date agreed upon for the end of the tenancy.

Section 37 (2) of the *Act* states that, when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. . Subject to section 38(3)(b) of the *Act*, a landlord may retain from a security deposit an amount that, at the end of the tenancy remains unpaid. Based on her testimony, the tenant did not effectively vacate the residence as required by the *Act* and the mutual agreement between the parties. I find the landlord's deduction of \$68.00 from the security deposit based on the tenant maintaining possession of the residence beyond the agreed-upon date to vacate is reasonable and justified under section 38(3)(b) of the *Act* in the circumstances.

Conclusion

The tenant withdrew her application to order the landlord to comply with the *Act* and her claim for other compensation or relief under the *Act*.

I dismiss the remainder of the tenant's application 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: February 25, 2015

Residential Tenancy Branch

