



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the return of the security deposit - Section 38.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

It is noted that the Parties were disruptive during the proceedings and had to be cautioned more than once. At the end of the hearing the Parties mailing addresses were confirmed and the Tenant consented to the amendment of the application to correct the dispute address and the Landlord’s address.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Relevant Background and Evidence

The following are undisputed facts: The tenancy started in either May or June 2014 and ended on July 31, 2014. Rent of \$650.00 was payable monthly. At the outset of the tenancy the Landlord collected \$325.00 as a security deposit. No move-in inspection was conducted or report completed. Neither Party provided any documentary evidence.

The Tenant states that her forwarding address was provided to the Landlord around August 3, 2014 by regular mail. The Tenant states that the security deposit has not been returned and claims double the security deposit. The Landlord states that no forwarding address was ever received from the Tenant, that the Tenant left the unit with damages and that the Landlord made no application for dispute resolution. The Tenant confirms that the Tenant's address as contained in the application is the Tenant's forwarding address. This address was provided to the Landlord.

The Tenant states that the Landlord informed her in June 2014 that the Tenant would have to move out of the unit by August 1, 2014 as the Landlord's children would be moving into the unit. The Tenant states that she does not know whether she was given a written notice from the Landlord and that no written notice was given by the Landlord. The Tenant states that she moved out of the unit for concerns over her safety from the Landlord's family members. The Tenant also states that she moved out of the unit because renovations had not been completed and there was no door on the bathroom. The Tenant states that the children did not move into the unit and claims "a two month penalty".

The Landlord states that the Tenant was never given any notice to move out either orally or in writing. The Landlord states that she never told the Tenant that her children were moving into the unit. The Landlord states that the Tenant ended the tenancy herself and told the Landlord that she was moving out. The Landlord states that the Tenant and her family members were on friendly terms.

Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit. The landlord must make the inspection and complete and sign the report even if the tenant refuses to participate. Section 24 of the Act provides that where a landlord does not complete and give the tenant a copy of a move-in condition inspection report, the right to claim against that

deposit for damage to the unit is extinguished. Based on the undisputed evidence that no move-in condition inspection and report was completed, I find that the Landlord's right to claim against the security deposit for damages to the unit is extinguished.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

The Tenant's evidence was inconsistent and appeared indecisive. The Tenant provided no supporting evidence of a forwarding address being given to the Landlord, such as, at a minimum, a copy of a letter containing the forwarding address. In light of this and considering the Landlord's more believable evidence on this point, I find that the Tenant has not substantiated on a balance of probabilities that the Landlord was provided a forwarding address prior to the hearing.

The provision of the forwarding address is a triggering event for the Landlord to act in relation to the security deposit. As the Landlord now has the Tenant's forwarding address and as the Landlord's right to claim against the Tenant for damages to the unit has been extinguished, I find that the Landlord must return the security deposit of \$325.00 plus zero interest to the Tenant within 15 days of this hearing date. The Landlord was orally given this determination at the hearing and the Landlord's possession of the Tenant's forwarding address was assured. The Tenant's claim for double the security deposit is dismissed with leave to reapply should the Landlord fail to return the security deposit the Tenant.

Section 50 of the Act provides that where a landlord gives a tenant a notice to end tenancy for landlord's use and the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Tenant is entitled to compensation. In order to be effective a notice from the landlord must be on the approved form. Given the undisputed evidence that the

Landlord did not serve the Tenant with any written notice to end tenancy, and considering the various other reasons provided by the Tenant for moving out of the unit, I find that the Tenant has not substantiated on a balance of probabilities that the Landlord either ended the tenancy or gave the Tenant with a notice to end tenancy for landlord's use. I therefore dismiss the Tenant's claim for compensation arising from the end of the tenancy and the Landlord's use of the rental unit.

Conclusion

I order the Landlord to return the security deposit of \$325.00 plus zero interest to the Tenant within 15 days from the date of this hearing.

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: March 19, 2015

Residential Tenancy Branch

