



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD RR MNDC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38;
- b) An Order for a refund of January rent pursuant to sections 28 and 65; and
- c) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and the landlord agreed that she had received the Application for Dispute Resolution and the forwarding address on January 31, 2015. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act and also to the refund of rent for January 2015?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. It is undisputed that the tenant paid \$750 a month in rent and paid a security deposit of \$325; the tenancy commenced in August 2011. It is undisputed that the tenant gave a notice to end his tenancy on January 3, 2015 and vacated on January 31, 2015 and gave his forwarding address at the time. The tenant's security deposit has never been returned and he gave no permission to retain any of it. He claims double the deposit refunded.

The landlord said she retained the deposit for the tenant had caused damage to the unit. She filed evidence concerning damages. She had not filed an Application to claim

against the deposit and I advised her in the hearing how to do this within the two year time limit specified in the Act.

The tenant also claims a refund of January rent for loss of their peaceful enjoyment. Apparently the landlord had served them a Notice to End Tenancy although they did not discuss this in the hearing. On January 5, 2015, the tenant emailed the Bylaw Officer to say they were moving due to loud noises from the landlord. She complains that her baby is not sleeping because of strange men in the back yard, the landlady slamming doors and getting up at 4a.m. to shovel snow. She notes the landlady plays the radio over the baby's room very early and late at night. She asks for help as the tenancy will last for two more weeks and when she complained to the landlord, she just turned up the radio and shovelled more. They enclosed a Police Report noting they were called to this home to keep the peace on January 6, 2015. When they arrived, they found the suite occupants sleeping. The tenants told them they used the fan (of which noise the landlord complained) as white noise to help the baby sleep. They turned the fan off then. An undated note from the landlord states that the fan keeps her awake all night. The tenant wrote a log detailing shovelling noise at 6 a.m. on January 13th and 18th and stomping from the landlord on January 9, 2015 at 6:20a.m.

The landlord said she had called the Police because of the excessive banging and noise of the tenants which made her think the tenants were destroying the suite. This information is confirmed in the Police Report but they found no damage in the suite. The landlord said their dog had alerted them to the Police arrival and they pretended to be asleep. The tenants said the Police were very friendly.

The landlord said she never shovelled snow at 4a.m. but had shovelled it at 6:30a.m. as the snow was extremely heavy in her area this year and she was afraid of the weight on her deck added to the forecast of rain. The landlord said the tenants gave her their Notice to End Tenancy because of the neighbour's dog and they had complained to the Bylaw Officer about the dog. She said the dog problem had started in June 2014 when the dog had bitten her because she was working on a tree at the fence line. The dog was on its own property but the tenants wanted her to get a medical report and have the dog put down and she refused. She said the tenants became impossible then, making as much noise as they could. They insisted the Officer should do more about the fence and gate or have the dog put down but the Officer came and looked at the arrangement and said the dog was safely contained. Some friends of the landlord wrote letters describing excessive noise from music, slamming doors. One Statutory Declaration is from a professional woman who was responsible for tenant relations in major projects. She states she has been a friend of the landlord who is an elderly lady for about seven years. She attests that the landlord always tried to accommodate the tenants but there

were problems since the female tenant's mother moved in in the Summer of 2014. She notes she has seen considerable damage in the unit caused by the tenants. Some photographs are enclosed showing damage. She notes that the tenants did not complain to her about strange men in the yard and she denies that they exist.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

This is an application by the tenant for double the security deposit and a rebate of rent. The evidence is that the landlord has not filed an Application so, although she has submitted evidence of damages, I decline to consider it on the tenant's Application.

I find the undisputed evidence is that the tenant served his Notice to End Tenancy on January 3, 2015 and vacated on January 31, 2015. Although the tenancy agreement stated that two months notice was to be provided, I find sections 44 and 45 of the Act provide a month to month tenancy like this can be ended on a one month notice and section 5 of the Act provides that a tenancy agreement cannot override the Act. However, a tenant's Notice to End Tenancy served in January does not take effect until February 28, 2015 according to section 45 of the Act. Therefore I find this tenancy legally ended on February 28, 2015 and the forwarding address was provided on January 31, 2015.

The *Residential Tenancy Act* provides:

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of (a) the date the tenancy ends, and*

(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(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...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that he paid \$325 security deposit, served the landlord personally with his forwarding address in writing on January 31, 2015 and vacated on January 31, 2015. I find he gave no permission for the landlord to retain the deposit and has not received the refund of his security deposit. I find the landlord agreed with these facts. The landlord stated she has not filed an Application to claim against the deposit and the last date to file would have been March 15, 2015 as the tenancy legally ended on February 28, 2015. I find the tenant entitled to recover double his security deposit.

On the tenant's claim for a refund of rent for January 2015, I find insufficient evidence to support his claim. Although the tenant claimed the landlord was disturbing his peaceful enjoyment, I find the landlord made credible statements that the tenants were disturbing her peaceful enjoyment. Her credibility was supported by statements of friends who visited and witnessed the excessive noise and banging. Furthermore, she was the person who complained to the Police at 4 a.m. about the noise of the tenants. The tenant said the Police were nice and friendly yet there is no record of him ever complaining about strange men in the yard to them although he was allegedly worried about the baby's safety or complaining about the excessive noise of the landlord. I find the female tenant's notes to a Bylaw Officer after they had served their Notice to End Tenancy to be somewhat self serving. I found no evidence submitted of complaints prior to them serving the Notice to End Tenancy. I find that shovelling snow at 6:30a.m. on a few occasions in January in cases of extreme weather such as last Winter is not sufficient to significantly disturb the peaceful enjoyment of tenants. In summary, I find insufficient evidence that the tenants' peaceful enjoyment was significantly disturbed in January and this caused them to end their tenancy or that this merits a refund of January's rent. I dismiss this portion of their claim.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover filing fees for this Application.

Original security deposit (on interest 2009-15)	325.00
Double security deposit	325.00
Filing fee	50.00
Total Monetary Order to Tenants	700.00

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: April 14, 2015

Residential Tenancy Branch

