



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and the tenants.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for overpaid rent; for all or part of the security deposit; for a penalty for failing to return the full deposit; for costs associated with pursuing her claim; for stress and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on April 7, 2013 for a 1 year and 1 day fixed term tenancy beginning on May 1, 2013 that converted to a month to month tenancy on May 2, 2014 for a monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$750.00 required and a pet damage deposit of \$1,500.00 required. The parties, however, agreed that the tenant had paid \$3,000.00 for both deposits.

The tenant submits that she vacated the rental unit on June 27, 2014 and both parties agree the landlord returned \$2,250.00 of the deposits held by e-transfer on June 30, 2014. The parties also agree that after some communication back and forth the landlord acknowledged the additional amount of deposits held. The parties agree that on July 21, 2014 the landlord returned to the tenant an amount of \$610.00 by e-transfer and that the landlord withheld \$140.00 for carpet cleaning.

The tenant testified that she provided the landlord with her forwarding address by email on July 3, 2014 and again by registered mail on July 16, 2014. The tenant submitted into evidence a copy of the returned registered mail address to the landlord and noted

by Canada Post as unclaimed. The landlord submits he never received the tenant's forwarding address.

The tenant seeks return of the balance of \$140.00 of the deposit and doubling of the deposits in the amount of \$3,000.00 for the landlord's failure to return the full deposits in accordance with the *Act*.

The tenant submits that despite having agreed to provide the rental unit to the tenant by May 1, 2013 the landlord had failed to complete promised repairs to the property. The tenant further testified that as a result the parties agreed that the tenant would move in after the repairs had been completed. The tenant submitted that they did not specify a particular date that the repairs were to be completed or that she would move in.

The tenant submits that despite this subsequent agreement the landlord had not completed the work by May 10, 2013 but that she needed to move in by that date and she did so. She states the promised work was not completed. The tenant seeks the equivalent of ½ month's rent as compensation in the amount of \$750.00.

The landlord submits that the tenant had access to the rental unit prior to May 1, 2013 and had moved some possessions in prior to the start date of the tenancy and that they had no such discussions regarding promised repairs or that she was not allowed to move in until any repairs were made.

The tenant also seeks compensation in the amount of \$1,000.00 for the costs of printing text messages; registered mail costs; photo printing costs; and stress for issues during the tenancy and dealing with the return of the deposits.

The tenant submitted that despite repeated requests for repairs and maintenance issues during the tenancy the landlord failed to complete these items. The landlord submits that he responded to every request the tenants made in a timely fashion.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

In the case of verbal testimony, I find that where both the landlord and tenant agree on events, there is no reason to not accept the testimony as fact. However when the parties disagree with how events unfolded, the burden rests with the party making a claim to provide sufficient evidence to corroborate their version of events.

In regard to the provision of the tenants forwarding address, I find that the tenant did provide the landlord with her forwarding address by registered mail on July 16, 2014 by

registered mail. I find the fact the landlord did not claim the registered mail does not impact the fact the tenant did what she was required to do under the *Act* to provide the landlord with her forwarding address. As such, I find, allowing 5 days for delivery, the landlord is deemed to have received the tenant's forwarding address by July 21, 2014.

As such, in the case before me, I find the landlord had until August 5, 2014 to either return all of the deposits held or file an Application for Dispute Resolution to claim against the deposits held with the Residential Tenancy Branch (RTB). There is no evidence before me that the landlord filed an Application with the RTB for such a claim.

As a result, I find the tenant is entitled to the return of the balance of the deposits held in the amount of \$140.00. However, in relation to the claim for \$3,000.00 as a doubling of the deposits held I find the circumstances of this tenancy agreement do not allow the doubling of the total amounts held by the landlord.

As the tenancy agreement stipulates that the security deposit and pet deposits for the tenancy totaled \$2,250.00 (security deposit of \$750.00 and pet damage deposit \$1,500.00), I find the landlord returned all of these deposits by June 30, 2014. As such, I find the landlord had returned these deposits in full within the required deadlines of Section 38(1) and therefore the tenant is entitled to the doubling of these deposits.

As to the balance of \$850.00 held as a deposit was not returned to the tenant in full and the landlord did not file an Application for Dispute Resolution to claim against this deposit within 15 days of the end of the tenancy and receipt of the tenant's forwarding address I find the tenant is entitled to doubling of this amount, pursuant to Section 38(6).

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In relation to the tenant's claim for the compensation in an amount equivalent to ½ month's rent for not being provided possession of the rental unit at the start of the tenancy, I find that because the landlord disputes the verbal testimony of the tenant and the tenant has provided no additional evidence that can corroborate her claim the tenant has failed to provide sufficient evidence to establish that she has suffered a loss or damage.

Even if the tenant had established she had suffered a loss I find she has failed to provide sufficient evidence that any loss resulted from a violation of the *Act*, regulation

or tenancy agreement on the part of the landlord. I therefore dismiss this portion of the tenant's Application.

And finally in relation to the tenant's claim for \$1,000.00 for costs associated with preparing for this hearing I note the *Act* does not allow for the recovery of cost associated with pursuing a claim against either party in a tenancy. I also find that a tenant is entitled to compensation for stress as a result of dealing with her landlord either during a tenancy or after a tenancy is over. I dismiss this portion of the tenant's Application.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,015.00** comprised of \$140.00 balance of security deposit owed; \$850.00 doubling of deposit held; and \$25.00 of the \$50.00 fee paid by the tenant for this application as she was only partially successful in her claim.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 15, 2015

Residential Tenancy Branch

