



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / and recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is a house. The house is comprised of 2 separate rental units: a 3 bedroom main level and a 3 bedroom basement. Further to the tenant herself, the parties to the dispute are the owner / landlord, and the landlord's agent, collectively referred to here as "the landlord."

Pursuant to a written tenancy agreement which was entered into by the parties in July 2014, tenancy for the entire house began on August 01, 2014. Monthly rent of \$3,500.00 was due and payable in advance on the first day of each month, and a security deposit of \$1,750.00 was collected.

It appears there was agreement between the parties that the tenant would sublet the basement portion of the house. In that regard, the tenant entered into a tenancy agreement with renters for the basement portion effective from August 01, 2014.

After determining on or about July 31, 2014 that there was a smell of smoke in the main portion of the house, the tenant discussed her concern during a conversation with the landlord's agent on August 04, 2014. At his stage, however, while no formal notice to end tenancy had been given, and no mutual agreement to end tenancy had been reached, the owner / landlord came to understand that the tenant would not be

proceeding with the tenancy, and in the evening of August 04, 2014 she undertook to begin advertising the main portion of the house for rent.

On August 05, 2014 the tenant put a stop payment on her rent cheque for \$3,500.00. On August 06, 2014, the tenant, the owner / landlord, the landlord's agent and a representative from the basement renters met in-person. On that occasion the tenant reimbursed funds she had previously collected from the basement renters, and together they agreed to end the tenancy they had entered into. Later, the owner / landlord entered into a new tenancy agreement with the basement renters. For her part, the tenant re-issued a cheque to the landlord for August's rent in the amount of \$1,650.00, which applied exclusively to the upstairs portion of the house.

The landlord and the tenant met again on August 14, 2014, at which time the landlord attempted to repay the security deposit by way of hand delivering a cheque to the tenant. However, as the cheque was not fully dated, the tenant declined to accept it. The landlord undertook a second time to repay the tenant's security deposit by sending her a cheque by registered mail in the amount of \$1,750.00. While the tenant received the cheque on August 19, 2014, it was post-dated September 15, 2014. During the hearing the tenant testified that she has since cashed the cheque.

The landlord testified during the hearing that new renters were found for the upstairs portion of the house effective from August 15, 2014.

Analysis

Based on the documentary evidence and the affirmed testimony of the parties, the various aspects of the tenant's claim and my related findings are set out below.

\$1,650.00: reimbursement of rent for August 2014

During the hearing the parties agreed that the landlord will repay $\frac{1}{2}$ of the amount originally claimed by the tenant, which is **\$825.00**.

\$3,500.00: (2 x \$1,750.00) double return of the original security deposit

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section 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 either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the

landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find that the subject tenancy effectively ended on August 14, 2014. I find that after informing the landlord of her forwarding address by way of regular mail sent on August 15, 2014, the tenant received a cheque repayment of the original security deposit on August 19, 2014. However, as the landlord's cheque was postdated September 15, 2014, I find that the tenant did not receive repayment of the security deposit until that date. I further find that as the period of time between when the tenant provided her forwarding address by mail on August 15, 2014 (deemed by section 90 of the Act to have been received 3 days later on August 18, 2014), and when she received repayment of her original security deposit on September 15, 2014, is in excess of 15 days, AND the landlord did not file an application for dispute resolution, the tenant has established entitlement to the double return of her security deposit. The total entitlement of \$3,500.00 (2 x \$1,750.00) is reduced by the amount already paid of \$1,750.00, leaving a net amount still owed of **\$1,750.00** (\$3,500.00 - \$1,750.00).

\$20.00: fee assessed by bank for stop payment on cheque

\$80.49: Fortis (gas) utility for the period August 01 to 13, 2014

\$31.75: Hydro utility for the period August 02 to 14, 2014

\$12.00: cab fare

During the hearing the tenant withdrew all of the above particular aspects of her original application.

\$150.00: cost of lock installation (labour & materials) on outside entrance door to basement unit

On July 29, 2014, the tenant's husband "replaced a lock on the side basement door for safety reasons." A letter written by the tenant's husband which is dated September 11, 2014 was submitted in evidence. In his letter, the tenant's husband states in part as follows:

....The deadbolt had to be replaced in a timely manner as new tenants were moving in and the existing deadbolt at that time was not up to code. [The local government authority] bylaw does not allow a double cylinder deadbolt on an entry door as it would prevent a quick exit if there was a fire.

The value of my services would be \$150.00 which would include the installation of a single cylinder deadbolt provided by me and travel time to the site.

While I note the absence of a receipt in evidence, and the absence of any documentary evidence in support of the tenant's husband's authority / qualifications related to the lock change, I find on a balance of probabilities that there was a benefit to the landlord from the installation of the lock. In the result, I find that the tenant has established entitlement to **\$75.00**, or half the amount claimed.

\$100.00: *filing fee*

As the tenant has succeeded with the principal aspects of her application, I find that she has also established entitlement to recovery of the full filing fee.

Total entitlement: \$2,750.00 (\$825.00 + \$1,750.00 + \$75.00 + \$100.00)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$2,750.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of the 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 08, 2015

Residential Tenancy Branch

