



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OTBEC PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with a tenant's application for monetary compensation for return of double security deposit and moving costs, as amended. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the tenant entitled to doubling of the security deposit?
2. Has the tenant established an entitlement to recover her moving costs from the landlord?

Background and Evidence

The tenancy commenced August 1, 2013 and the tenant paid a security deposit of \$500.00 and a key deposit of \$50.00. The tenant was required to pay rent of \$1,000.00 per month that was subsequently increased to \$1,022.00 per month, payable on the 1st day of every month.

Security Deposit

The first part of the tenant's claims pertain the doubling of the security deposit. I have summarized the parties' respective position below.

The tenant and the landlord's agent participated in a move out inspection of the property on September 28, 2014, the tenant returned the keys to the landlord, and the tenant provided her forwarding address in writing at that time. The tenant did not authorize any deductions from the security deposit. The landlord issued a cheque for return of the security deposit and key deposit on October 23, 2014 which the tenant received in the mail at the end of October 2014. The tenant has cashed the cheque sent to her.

The tenant seeks doubling of the security deposit on the basis the landlord failed to return the security deposit within the time limit for doing so. The landlord did not dispute that the landlord

failed to meet the 15 day time limit for returning the security deposit and acknowledged that the landlord is liable to paying the tenant double the security deposit.

Moving costs

The second part of the tenant's claim pertains to recovery of her moving costs of \$661.50 from the landlord. I have summarized the parties' respective positions below..

It was undisputed that on August 25, 2014 the landlord issued the tenant a Breach Letter and that before the end of August 2014 the tenant gave her notice to end tenancy to be effective at the end of September 2014.

The tenant submitted that she gave notice to end the tenancy because she received the Breach Letter and that it was without merit which caused her to fear for the safety of herself and her daughter. The tenant acknowledged that after receiving the Breach Letter she contacted the landlord's agent about allegations but the landlord did not provide her any proof the allegations were true.

The landlord denied any responsibility to compensate the tenant for her moving costs as it was the tenant that elected to move. The landlord submitted that multiple complaints were received from other tenants of the residential property about the tenant or her daughter peering into their windows and the landlord acted appropriately by issuing the tenant a Breach Letter in an effort to stop the behaviour.

The breach letter was submitted into evidence and it reads, in part:

It has been brought to our attention that you and your daughter have been invading the privacy of a fellow tenant. The tenant has witnessed you multiple times, looking [and] peering into his suite while he is home. It is absolutely essential that all residents respect the privacy right of their neighbours.

Upon receipt of the breach letter the tenant wrote emails to the landlord to refute the allegations but she also proceeded to make enquiries so as to locate another place to live and when a house came available she felt like she "won the lottery" and she gave notice to end the tenancy.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each part of the tenant's claims against the landlord.

Security Deposit

Unless a landlord has the tenant's authorization to make deductions from a security deposit, or prior authorization from an Arbitrator, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

It was undisputed that the landlord had been provided the tenant's forwarding address in writing on September 28, 2015 which is also the date which the tenancy ended. Since the landlord made no claim against the security deposit, did not have authorization to retain the security deposit, and did not issue a refund cheque until October 23, 2014 it is clear that the landlord failed to meet its obligations under section 38(1) of the Act. As such, I find the landlord obligated to pay the tenant double the security deposit. Since the single portion of the security deposit has already been received by the tenant, I award the tenant a further \$500.00 to represent the doubled portion of the security deposit.

The Act does not provide for doubling of a key deposit and that deposit was not included in the above calculation.

Moving costs

As the applicant making a monetary claim, the tenant has the burden to prove all of the following pursuant to sections 7 and 67 of the Act:

1. That the landlord violated the Act, regulations, or tenancy agreement;
2. That the landlord's violation caused the tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the tenant did whatever was reasonable to minimize the damage or loss.

The landlord explained to the tenant in August 2014, and during the hearing, that multiple complaints had been received about the conduct of the tenant or her daughter. Since the landlord has an obligation to protect its tenants' right to quiet enjoyment, which includes reasonable privacy, having received complaints about loss of privacy, I find the landlord acted within reason by issuing a breach letter to the tenant. Therefore, I am not satisfied the landlord violated the Act, regulations or tenancy agreement by issuing the breach letter to the tenant.

Receipt of a breach letter does not in itself end a tenancy; rather, it is way to communicate a warning to a tenant that their conduct, if continued, may serve as a basis for ending the tenancy. A tenant in receipt of a breach letter has options, including: correcting the breach; dispute the allegations to the landlord; or, the tenant may file an Application for Dispute Resolution to seek further remedy if necessary. In this case, the tenant did dispute the allegations to the landlord

and then she elected to move to a house that became available and as she described, finding a house was like winning a lottery for her. Therefore, I am not satisfied that her moving costs were the result of a violation of the Act, regulation or tenancy agreement by the landlord as opposed to her own decision to move to a property she found more desirable.

In light of the above considerations, I dismiss the tenant's claims for recovery of moving costs against the landlord.

Filing fee and Monetary Order

As the tenant was successful in establishing an entitlement to doubling of the security deposit, I award the tenant recovery of the \$50.00 filing fee she paid for this Application.

With the tenant's copy of this decision is a Monetary Order in the total amount of \$550.00 which represents the doubled portion of the security deposit and recovery of the filing fee.

To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) if payment is not made.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$550.00 to serve and enforce as necessary.

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: May 29, 2015

Residential Tenancy Branch

