



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 dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of her security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The two landlords did not attend this hearing, which lasted approximately 43 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlords with the tenant's application for dispute resolution hearing notice on December 8, 2014, by way of registered mail. The tenant provided a Canada post receipt and tracking number with her application, to confirm this service. The tenant confirmed that she served the landlords with her written evidence package on March 2, 2015, by way of registered mail. The tenant provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the Act, I find that the landlords were deemed served with the tenant's application notice on December 13, 2014 and written evidence package on March 7, 2015 (collectively "Application"), five days after each of their registered mailings.

The tenant testified that she sent a USB digital evidence file to the landlords by way of registered mail. The tenant could not recall the date of service and could not locate a Canada Post tracking number during the hearing. I advised the tenant that as she was

unable to provide the above information to confirm service, that I could not consider her USB digital evidence at this hearing or in my decision.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The tenant testified that this tenancy began on October 15, 2014 and ended on October 16, 2014. The tenant stated that monthly rent in the amount of \$850.00 was payable on the 15th day of each month. The tenant confirmed that she paid a security deposit of \$425.00 on September 15, 2014 and indicated that the landlords continue to retain this deposit. The tenant stated that the landlords refused to provide her with a receipt for the payment of her security deposit. The tenant confirmed that she was living in the same house as the landlords in a self-contained side suite.

The tenant stated that there is no written tenancy agreement for this tenancy, as only a verbal agreement was reached. The tenant stated that no move-in or move-out condition inspections or reports were completed for this tenancy. The tenant stated that she provided a forwarding address in writing to the landlords on October 24, 2014, by leaving a copy of a letter of the same date in the landlords' mailbox. The tenant provided a copy of this letter for this hearing.

The tenant seeks a return of double the amount of her security deposit, totalling \$850.00. The tenant stated that the landlord did not return her deposit in full or file an application within 15 days of the tenant providing her forwarding address in writing.

The tenant also seeks a return of the \$850.00 rent and \$20.00 internet usage fee that she paid to the landlords for October 2014. The tenant provided a receipt for these amounts. The tenant stated that she was required to vacate the rental unit the day after she moved in because the unit was very dirty, there was mold in the unit, there was no heat and no plug-in outlets.

The tenant stated that she moved into this rental unit directly after arriving from out-of-province, and that she was unable to personally view the unit prior to moving in. The tenant testified that she sent an agent on her behalf to view the unit prior to her moving in. The tenant stated that she sent this agent to determine whether the unit was suitable and this agent did not mention any problems, including a lack of heat, the dirty state of the unit, the mold or the absence of plug-ins. The tenant then paid rent and an internet usage fee of \$870.00 total to the landlord, the day that she moved into the rental unit on October 15, 2014, when she says she noticed the problems. The tenant claims to have noticed the problems "a couple hours" after having paid the landlords.

The tenant stated that she spoke with the landlords about the heat issue immediately on October 15, 2014, but nothing was done. She indicated that the landlords advised her about a self-controlled thermostat but after she increased the heat on this thermostat, there was no increase in the heat temperature. The tenant said that she slept with extra clothing and with heat from the stove, during this time.

The tenant provided a written letter to the landlords regarding these problems the next day on October 16, 2014. The tenant provided a copy of this letter with her written evidence. The tenant explained that she went to live in the hotel where she was working, from October 16, 2014 onwards, because she could not live in the rental unit any longer. The tenant stated that she attempted to contact the landlords after October 16, 2014, in person, by telephone and by email but she did not receive a response. The tenant did not provide a copy of any of the emails that she claimed to have sent to the landlords. The tenant stated that after not receiving a response from the landlords, she served them with her forwarding address letter, dated October 24, 2014, asking for the return of her rent, security deposit, and internet usage fee and indicated that she did not receive a response to this letter.

Analysis

I find that the tenant failed to provide sufficient evidence that she paid a security deposit of \$425.00 to the landlords. Although the tenant stated that the landlords refused to provide her with a receipt for payment, I find that there are other methods to prove that the tenant made this payment. The tenant stated that she completed an interac e-transfer to the landlords. The tenant stated that she provided a screen shot image of this e-transfer with the landlords' name and the amount, on her USB digital evidence. As advised to the tenant at the outset of the hearing, I am unable to consider this evidence at this hearing because the tenant was unable to prove service. In any event, I reviewed this evidence prior to the hearing and find that it is insufficient to prove

payment, as it is only a screen shot of one of the landlord's names and an amount. I find that the tenant should prove an e-transfer with more detailed information, including an email with the time, date, email addresses for both parties, transfer details, amount and password for the landlords to retrieve the deposit. The tenant did not provide this evidence for this hearing, despite the fact that it would have been available to the tenant at the time of this hearing. The tenant's Application was filed on December 4, 2015 and this hearing was held on July 10, 2015, which was ample time for the tenant to obtain this evidence. Accordingly, the tenant's application for the return of double her security deposit, totalling \$850.00, is dismissed without leave to reapply.

I find that the tenant failed to prove that the landlords materially breached the terms of this tenancy agreement, such that the tenant was entitled to end the tenancy without giving one month's notice.

Section 45(3) of the Act states the following, in part:

(3) If a landlord has failed to comply with a material term of the tenancy agreement...and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find that it was the tenant's responsibility to determine whether this unit was suitable for her occupation, prior to beginning this tenancy. A lack of heat, as well as evidence of dirt and mold, are obvious issues that can be detected quickly when entering a rental unit.

Although the landlord is required to provide the tenant with a rental unit that is suitable for occupation, I find that the tenant failed to provide sufficient evidence to show that the rental unit was dirty, had mold and lacked electrical outlets. The tenant did not provide any photographic evidence of this fact. As mentioned earlier in this decision, I could not consider the tenant's USB evidence; however, having reviewed this evidence before the hearing, I find that the photographs submitted on the USB drive were insufficient, in any event, to show substantial dirt or mold in the unit or the lack of electrical outlets. The tenant's agent did not notice any of these issues when he appeared on the tenant's behalf to view the unit. The tenant's agent recommended the unit, such that the tenant was confident enough to pay a security deposit by way of e-transfer one month before occupying the unit.

The tenant also failed to show that the rental unit lacked heat, as she did not provide any documentary evidence, aside from her own statement, or witness testimony to confirm this fact. Moreover, if the tenant had to live without heat for one night during the fall months, presumably this would be a major issue to be addressed with the landlords

immediately. After determining that the thermostat did not work, the tenant did not take any further action until the next day when she provided the landlords with a letter. Yet, the tenant and landlords were living in the same house and the tenant would have had close and immediate access to the landlords. The tenant maintained that she was unaware whether the rest of the house had any heat. Further, I find that the tenant did not provide the landlords with sufficient notice to rectify these problems, as she moved out the next day on October 16, 2014. The tenant says that she provided the landlords until October 23, 2014 to rectify the issues and then she would return to the unit. This is a period of one week to resolve the multiple problems identified by the tenant. Although heat is a material and necessary utility, I find that the tenant did not provide sufficient evidence to show that she made reasonable efforts to contact the landlords between October 16 and 23, 2014 to resolve any heating problems.

On a balance of probabilities and for the reasons stated above, I dismiss the tenant's Application for a monetary award of \$870.00 for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, without leave to reapply.

As the tenant was unsuccessful in her Application, I find that she is not entitled to recover the \$50.00 filing fee from the landlords.

Conclusion

The tenant's entire Application is dismissed without leave to reapply.

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: July 21, 2015

Residential Tenancy Branch

