



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 was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord stated that he had provided an evidence package to both the Residential Tenancy Branch (the “RTB”) and the Tenant the day before the hearing. Rule 3.15 of the RTB Rules of Procedure (the “Rules”) provides that evidence must be received at least 7 days before the hearing. As the Landlord did not provide the evidence packages to either the Tenant or the RTB within the time required, I decline to consider it. The Landlord has opportunity to provide oral evidence on the details of the documentary evidence that has been excluded for consideration.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The Parties did not agree about the tenancy start date as either September 15, 2014 or October 1, 2014 but agree that the tenancy ended on October 31, 2014. Rent of \$1,200.00 was payable monthly on or about the 1st day of each month.

The Tenant states within the first 15 days of the tenancy the Tenant collected the security deposit from her other two roommates and paid the Landlord \$600.00 in cash along with a rent payment. The Tenant described the payment of this cash to the Landlord. The Tenant also provided letters from the roommates in relation to their attempts to obtain the return of the security deposit. One roommate sets out in this letter that the forwarding address and request for the return of the security deposit was delivered to the Landlord's residence on November 4, 2014. The other roommate also provides a letter indicating that this roommate was present on November 4, 2014 when the letter was delivered. The Tenant states that despite asking for a tenancy agreement the Landlord never gave them one. The Tenant states that she provided the forwarding address to the Landlord in the application. The Tenant claims return of double the security deposit.

The Landlord states that he received the forwarding address in the application and accepts that this receipt meets the Tenant's requirement to send a forwarding address in writing. The Landlord states that he is too busy to deal with any further delays over this matter as no security deposit was collected and no application could have been made to claim against a security deposit.

The Landlord states that the house was leased from a 3rd party to the Landlord and sublet by the Landlord to the Tenants. The Landlord states that the Tenant obtained the keys from the 3rd party and moved into the unit before the Landlord was able to get an agreement signed. The Landlord states that the terms of the tenancy were by verbal agreement. The Landlord states that as no written tenancy agreement was signed, no security deposit was collected by the Landlord.

The Tenant states that during the tenancy the Landlord continually threatened to evict the Tenants by stating that the 3rd party was not happy with the Tenants. The Tenant states that the

3rd party later informed the Tenants later that no problems existed. The Tenant states that when issues were discussed the Landlord would yell and be in the Tenant's face.

The Tenant states that despite paying all the rent for October 2014 the Landlord gave the Tenants a 10 day notice for unpaid rent. The Tenant states that decided to move-out of the unit and did not dispute the notice. The Tenant states that no information was sought from the RTB during the tenancy in relation to the Landlord's actions. The Tenant states that she is in communication with the most recent subletting tenants of the Landlord and they inform her that the Landlord is refusing to return their security deposit as well.

The Tenant claims \$300.00 as costs for a move that the Landlord caused by giving a false notice. The Tenant also claims \$400.00 for psychological distress. The Tenant states that the Landlord's evidence and claims contain constant inconsistencies.

The Landlord agrees that the Parties had heated discussions about issues the Landlord had with the Tenants but that he never raised his voice. The Landlord indicated that he is a very organized individual. The Landlord states that the Tenants failed to pay full rent for September 15 to 30th and was the reason for the Landlord serving the notice that ended the tenancy.

Analysis

Section 38 of the Act 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 repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the Tenant's supporting evidence from the other tenants and considering that the Tenant's oral evidence held a ring of truth while the Landlord's oral evidence seemed flat, I find on a balance of probabilities that a security deposit was paid to the Landlord and that at least one of the Tenants gave the Landlord a forwarding address for the return of the security deposit in November 2014. As the Landlord did not return the security deposit and did not make an application to claim against the security deposit within 15 days of receipt of the forwarding address I find that the Landlord must now return double the security deposit. As the Tenant has claimed **\$1,150.00** in the monetary worksheet for the security deposit, I keep the Tenant's entitlement to this amount.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. As the Landlord has a right to end a tenancy by issuing a notice to end tenancy, I find that the Tenant has not shown that the Landlord breached the Act or tenancy agreement by giving the Tenants a notice to end tenancy. As the Tenant had the right to dispute that notice to end tenancy but chose not to, I find that the Tenant has not substantiated that the Landlord caused the Tenants to move from a false claim and I dismiss this claim. As the Tenant has not provided any supporting medical evidence of psychological harm by the Landlord's actions I find that the Tenant has not shown on a balance of probabilities that the Landlord caused the Tenant the losses claimed and I dismiss this claim.

As the Tenant's application has otherwise been successful I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of \$1,200.00.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,200.00**. If necessary, this order may be filed in the Small Claims Court and 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: July 13, 2015

Residential Tenancy Branch

