



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 an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation for loss under the *Act*, for the return of double the security deposit and for the recovery of the filing fee

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the tenant entitled to a monetary order for compensation, for the return of double the security deposit and for the recovery of the filing fee?

Background and Evidence

The tenancy started in May 2006 initially for a fixed term of 3 years and continued for additional fixed terms of one year. The rent at the end of the tenancy was \$3,050.00. Prior to moving in the tenant paid a security deposit of \$2,800.00. The rental home consists of two levels. The tenant stated that she had the verbal permission of the landlord to sub-let the suite in the basement.

On August 22, 2015, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The reason for the notice was that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to serve the tenant with a notice to end tenancy. The tenant did not dispute the notice and moved out on October 31, 2014.

The landlord stated that the tenant left the unit in a dirty condition and left behind garbage that he had to dispose of. He stated that he visited the unit on October 31, 2014 and the spoke with the tenant regarding the cleanup of the rental unit.

The landlord testified that the tenant was tired from moving all day and agreed to cover the cost of cleaning/garbage disposal if the landlord got it done. The tenant denied having had this conversation and denied having agreed to cover the cost of cleaning. The tenant provided his forwarding address on November 19, 2014

On December 02, 2014 the landlord sent the tenant a cheque for the security deposit plus accrued interest with a deduction of \$435.00 for the cost of cleaning and garbage disposal. The total amount of the cheque was \$2,458.86. The tenant agreed to having received these funds. The tenant stated since she did not agree to a deduction off the security deposit, she is now entitled to the return of double the security deposit.

Both parties agreed that the rental unit changed hands on November 03, 2014. The tenant is claiming \$6,100.00 as compensation for what she believes is a wrongful eviction. The tenant stated that the landlord did not have a buyer at the time he served her the notice to end tenancy and therefore served the notice in bad faith.

In March of 2009, there was a flood in the basement of the home. The tenant stated that at the time of the flood, she did not have a tenant in the basement. She also stated that the restoration work started immediately but stopped prior to completion. The tenant stated that she completed the restoration work and is currently pursuing the costs of doing so in another court. The tenant has made a claim for loss of use of the basement and for other costs associated with the flood.

During the hearing, I explained to the tenant that because she had filed another claim for compensation resulting from the flood, she needed to include all her flood related claims in one application. Section 58.2.c of *Residential Tenancy Act* states that if a dispute is linked substantially to a Supreme Court action, then the arbitrator may decline jurisdiction. In any event the tenant withdrew a portion of her monetary claim that was related to the flood.

The tenant stated that she did a lot of maintenance work around the house and is claiming the cost of supplies that she purchased. The tenant has filed several receipts dating back to 2008. The landlord testified that he did not authorize the tenant to purchase any supplies. The tenant stated that it was a verbal agreement

The tenant stated that the washer was problematic and in 2008 she purchased a new one which she left behind at the end of the tenancy. The tenant is claiming to be reimbursed for the washer. The latest date on the invoices submitted by the tenant is 2014 for lawn repair. The landlord testified that he did not agree to cover any of the invoices that the tenant is claiming.

The tenant is claiming the following:

1.	Illegal eviction	\$6,100.00
2.	Double security deposit	\$5,600.00
3.	Deposit withheld	\$435.00
4.	Loss of use of lower house	\$4,950.00
5.	Insurance deductible	\$500.00
6.	Paint, safety, appliances, maintenance	\$6,912.49
7.	Filing fee	\$100.00
	Total	\$24,597.49

Analysis

1. Illegal eviction - \$6,100.00

When a 2 month notice is given for “landlord use of the premises”, as occurred in this case, section 51(2)(b) of the Residential Tenancy Act provides that in addition to compensation from the landlord that is equivalent of one month’s rent, if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, I note that: the stated purpose provided in the 2 month notice was that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to serve the tenant with a notice to end tenancy. The tenant stated that the landlord served the notice in bad faith because at the time of service, the landlord had not found a buyer. The landlord denied this and testified that the new owner took possession of the rental unit in November 2014.

If the tenant decided that the notice was served in bad faith, the tenant had the option of disputing the notice at the time it was served. Even if I accept the tenant’s testimony that there was no buyer at the time the notice was served, I find that the property was sold and changed hands immediately after the tenant moved out. Accordingly, I find that the tenant has not proven her entitlement to compensation pursuant s.51(2)(b).

2. Double security deposit - \$5,600.00

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the landlord made a deduction off the security deposit and returned only a portion on December 02, 2014. I now have to determine whether the deduction was made with or without the tenant's consent. The parties offered conflicting testimony. The landlord stated that the tenant verbally agreed to the deduction and the tenant denied having agreed to a deduction.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord did not file any evidence to document the alleged agreement and therefore I find that the landlord made a deduction off the security deposit without the approval of the tenant. Accordingly, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord collected a security deposit of \$2,800.00 and is obligated under section 38 to return double this amount along with the accrued interest of \$93.86 for a total of \$5,693.86. The tenant agreed that she has already received \$2,458.86 and therefore is entitled to the balance of \$3,235.00.

3. Deposit withheld - \$435.00

The full amount of the deposit has been returned in double as per the calculation in #2 above. Therefore the tenant has been reimbursed \$435.00 in #2.

4. Loss of use of lower house - \$4,950.00

5. Insurance deductible - \$500.00

The tenant withdrew claims #4 and #5.

6. Paint, safety, appliances, maintenance etc. \$6,912.49

The tenant stated that the landlord allowed her to purchase supplies to maintain the rental unit, to replace the washing machine and agreed to reimburse the tenant. The landlord denied having made an agreement such as this.

One of the receipts for a washing machine is dated 2008. The landlord stated that he did not authorize her to do so and would have replaced the existing machine himself if he was notified that it was problematic. The tenant also filed a receipt from 2014 for lawn repair and the landlord again denied having agreed to pay for lawn repair.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced.

However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail. For this reason, I am not prepared to interpret whether either party fulfilled the agreed-upon terms and I find that this portion of the tenant's application must be dismissed.

In addition, the tenant is claiming for items purchased as far back as 2008. Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to make application to claim the cost of supplies in a timely fashion, or shortly after each of the occasions when it became due, pursuant to the doctrine of laches, I find that this aspect of the tenant's claim must be dismissed.

7. Filing fee - \$100.00

The tenant has proven an entitlement under \$5,000.00 and therefore I award the tenant. \$50.00, towards the recovery of the filing fee.

Overall the tenant has established a claim as follows:

1.	Illegal eviction	\$0.00
2.	Double security deposit	\$3,235.00
3.	Deposit withheld	\$0.00
4.	Loss of use of lower house	\$0.00
5.	Insurance deductible	\$0.00
6.	Paint, safety, appliances, maintenance	\$0.00
7.	Filing fee	\$50.00
	Total	\$3,285.00

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$3,285.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion:

I grant the tenant a monetary order in the amount of **\$3,285.00**.

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: August 27, 2015

Residential Tenancy Branch

