



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MNSD

Introduction

The tenant applies for recovery of a security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”) and for damages for harassment and wrongful entry of her suite.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a one bedroom apartment below the landlord’s residence on one side of a duplex structure.

The tenancy started in January 2014 and ended March 31, 2015 as the result of notice given by the tenant. The rent was \$800.00 per month. The landlord holds a \$400.00 security deposit.

The tenant provided the landlord with her forwarding address in writing with her notice in February 2015.

The parties did not conduct a move-in condition inspect. No report was prepared. The parties did not conduct a move out inspection. The landlord prepared a report, unsigned by the tenant. He says he gave the tenant opportunities to attend the inspection. The last one was for April 1; the day after the tenancy ended. The tenant denies it.

The landlord wished to present evidence at this hearing to show that the carpet required replacement and the toilet required repair after the tenant left. As stated at hearing, in order to clothe an arbitrator with jurisdiction to hear such claims it is necessary for the landlord to bring his own application for dispute resolution. He is free to do so within two years after the end of the tenancy subject to any other applicable limitations.

The tenant claims that the landlord harassed her by certain words or remarks pertaining to Arthur Conan Doyle's Dr. Watson and to her daintiness or lack of it. She says he entered her suite on March 4 without her permission and showed the premises to prospective tenants. She says that he or his guests' vehicles blocked her access to a guest parking spot and to the gate to her door.

In response the landlord argued that the vehicles did not block the parking spot or the gate or if so, then only briefly. He says that his entry with prospective tenants in the absence of the tenant was the result of a miscommunication. He says that he apologized to the tenant in writing in December regarding any remarks she might have been offended by.

Analysis

Section 38 of the *Act* provides:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

(emphasis added)

Also relevant are the provisions of s. 24 regarding condition inspection reports and the consequences if a landlord fails to prepare one:

Condition inspection: start of tenancy or new pet

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and**
- (b) a previous inspection was not completed under subsection (1).**

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord has complied with section 23 (3) *[2 opportunities for inspection]*, and
- (b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,**
- (b) having complied with section 23 (3), does not participate on either occasion, or**
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

(emphasis added)

In this case the landlord has failed to comply with both his obligation regarding a move in condition report and with his obligation to either repay the deposit money or make an application within the 15 day period prescribed.

As the result, the tenant is entitled to return of her \$400.00 security deposit, doubled to \$800.00.

I have carefully considered the tenant's claim about harassment and entry and am not able to agree that her interactions with the landlord were anything more than the friction that might be collateral to a dispute or disagreement between them. They were not harassing. Further, I am not persuaded that even if a vehicle blocked her visitor parking spot on a rare occasion, it did not cause her any loss or inconvenience. There is no evidence to show she had visitors in vehicles on any of the occasions alleged.

In regard to the gate, I am not persuaded that the gate was “blocked” but merely that the landlord’s car was close to it. I attribute no malice to the incident and find that the tenant would not have been particularly inconvenienced by it.

The tenant’s remaining claims are dismissed.

Conclusion

The tenant’s claim is allowed in part. I grant her a monetary order against the landlord in the amount of \$800.00.

This decision was rendered orally at hearing and 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: September 25, 2015

Residential Tenancy Branch

