



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for compensation for loss under the Act, regulation or tenancy agreement pursuant to section 67 and authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant was assisted by an advocate and also had a support person present for the duration of the hearing. All parties acknowledged receipt of the relevant materials for this hearing from the other party.

Issue(s) to be Decided

Is the tenant entitled to a monetary order with respect to any loss as a result of this tenancy? Is the tenant entitled to the return of her security deposit?

Background and Evidence

This tenancy began on December 1, 2014 as a month to month tenancy. The landlord testified that the tenant ultimately vacated the rental unit, removing most of her possessions by December 31, 2014. The tenant testified that she vacated the rental unit before the end of December 2014. Both parties testified that the tenant had provided a \$237.50 security deposit with respect to this tenancy. The landlord retained \$170.00 of the security deposit and returned \$67.50.

Tenant Monetary Claim: The tenant testified that, from the outset of her tenancy, the landlord would regularly enter the rental unit without the tenant's permission. The tenant testified that the landlord and her children would come inside the unit. She testified that the landlord's children would jump on her bed and throw toy cars at the walls. She also testified that she believed the landlord was spying on her or moving items in her home to make her feel insecure. She

provided testimony with respect to a towel under the door that moved from one spot on the floor to another.

Both parties acknowledged that the police were contacted during the course of this brief tenancy a number of times. The landlord provided copies of police incident reports referring to allegations of threats from the tenant to the landlord as well as allegations by the tenant that the landlord “locked her out” of the residence. The allegations recorded on one occasion were that the tenant banged on the rental unit door, below the landlord’s residence for approximately 30 minutes.

The landlord provided undisputed testimony that tenant locked herself out of the residence on at least three occasions. The tenant agreed in her testimony that she was locked out of her residence on at least three occasions. However, the tenant insisted that, on at least two occasions, it was the landlord who locked her out.

The tenant claimed that the landlord would not allow the tenant to smoke cigarettes on the residential property, even the yard, forcing her to have to walk to the sidewalk and the road to smoke. She testified that she is in quite bad health and that this was an inconvenience to her that caused her discomfort and, when she got wet from the rain, it also caused her some illness (cold). The landlord denied this claim. The landlord testified that the tenant was allowed to smoke cigarettes in the yard of the residence and she believes the tenant also smoked cigarettes within her rental unit on occasion.

The tenant sought to raise issues that arose after vacating the rental unit. At a previous dispute resolution hearing, the tenancy was found to have ended prior to January 7, 2015. I note that the vacating of the unit was required pursuant to the issuing of a 2 Day Order of Possession by an arbitrator at the Residential Tenancy Branch.

Security Deposit: the landlord testified that she returned a portion (\$67.50) of the security deposit and retained \$170.00 towards. The landlord was granted a monetary order against the tenant in the amount of \$100.00 as a result of the previous RTB decision. The landlord acknowledged that she had provided no notice, sought no agreement and filed no dispute resolution to retain a portion of the tenant’s security deposit. The tenant submitted that she is entitled to double the amount of her original security deposit (with a deduction for the landlord’s monetary award) as a result of the landlord failing to return the entire deposit in accordance with the *Act*.

Analysis

Security Deposit: Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to

either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after December 31, 2014 (when the tenant provided her forwarding address in writing) to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "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." The tenant testified that, when asked by the landlord to agree to a deduction in the return of the security deposit, she did not and requested the return of the entire amount. Therefore, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

In this case, the landlord retained \$170.00 of the tenant's security deposit without agreement or permission as a result of a dispute resolution hearing. Therefore, I find that the landlord was not entitled to deduct a portion of the security deposit and is required to return that portion. I direct that the landlord return the remaining \$170.00 of the tenant's security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the evidence before me, I find that the landlord neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant testified that she did not waive their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*.

Residential Tenancy Policy Guideline No. 17 provides clarification on the amount of the deposit that will be doubled. The following are excluded:

- any arbitrator's monetary order outstanding at the end of the tenancy;
- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
- if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

(emphasis added)

Under these circumstances and in accordance with section 38(6) of the *Act*, and the Policy Guidelines, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her security deposit minus the \$100.00 owed to the landlord as a result of an outstanding monetary order. There is no interest applicable to this deposit. This monetary order will also reflect the deduction of the \$67.50 previously returned to the tenant by the landlord.

Tenant Monetary Claim: The tenant also sought a monetary award in the amount of \$3365.62 for loss of quite enjoyment due to unreasonable disturbance and unreasonable restriction of access to the rental unit by the landlord (\$3000.00) and storage costs as a result of the restriction of access to the rental unit (\$365.62).

The tenant testified that she suffered costs of storage of her personal items after she was required to vacate the rental unit. She provided a spreadsheet indicating the dates and times that she paid for storage of her possessions. The spreadsheet was titled, "Tenant Ledger". The tenant testified that it was prepared by a storage company though the document has no company information. The spreadsheet indicates "move-in" on 12/11/2014 and provides a breakdown of "rent charged" and "cash payments" after that date until 12/27/2015. The tenant submitted that the landlord should be responsible for these storage charges as;

- She moved her items out to avoid any damage done to her items by the landlord;
- She had nowhere to live after she was served with the 2 Day Order of Possession.

The tenant sought to raise issues of inconvenience or loss, including storage costs that she chose to incur after vacating the rental unit. I note that the vacating of the unit was required pursuant to the issuing of a 2 Day Order of Possession by an arbitrator at the Residential Tenancy Branch on January 7, 2015. Given that the tenancy was found to have ended prior to January 7, 2015 and given that tenant provided no evidence to support her claim that the landlord forced her out of the rental unit before the issuance and service of the valid Order of Possession, I do not find that it is appropriate to consider loss or costs incurred as a result of this end to tenancy after January 7, 2015.

The tenant further relied on section 28(b) and 28(c) of the *Act* (a tenant's right to quiet enjoyment) claiming \$3000.00 for loss of quiet enjoyment for the approximately one month that

the tenant resided in the rental unit. Residential Policy Guideline No. 6 explains quiet enjoyment,

At common law, the covenant of quiet enjoyment “promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from serious interferences with his or her tenancy.

Examples of an interference with quiet enjoyment are given within Policy Guideline No. 6. They include but are not limited to “entering the rental premises frequently, or without notice or permission.” When actions of the landlord are temporary resulting in discomfort or inconvenience, this does not constitute a breach of the tenant’s right to quiet enjoyment. A tenant claiming loss of quiet enjoyment must show a course of repeatedly threatening or intimidating behaviour.

As the tenant has made an application and a claim that her landlord has caused her loss of quiet enjoyment, it is her burden to prove that loss through evidence submitted to the arbitrator. The tenant has made a claim regarding the landlord’s behaviour that is denied by the landlord. The tenant testified that the landlord has entered her unit often without authorization. She has not provided any corroborating evidence to support her testimony. The tenant also testified that the landlord regularly locked her out of her own rental unit. The tenant acknowledged that, on at least one occasion she locked herself out of her rental unit. The tenant also acknowledged that it was possible that her roommate mistakenly locked her out.

I accept the documentary submissions of the landlord in the form of police reports. They provide contemporaneous and unbiased evidence with respect to the interactions between these parties. I note that the reports from different dates repeatedly note the fear of the landlord of the alleged threats by the tenant. I note that those reports do not indicate that the tenant was locked out of her own home by nefarious purposes, only that she had no keys to re-enter her unit after being out of the residence. I find that the evidence of the landlord was clear, simple and corroborated by the documentary evidence provided with respect to issues of harassment or quiet enjoyment. I find that the tenants’ evidence was at times confused or uncertain, even contradictory of earlier statements. I accept the testimony of the landlord and find that the tenant has not sufficiently proven a loss of quiet enjoyment of her rental unit as a result of action by the landlord.

Based on the evidence provided at this hearing, I find that the tenant has not proven a loss of quiet enjoyment, that any loss is a result of acts of the landlord or that the landlord acted unreasonably in managing her tenancy. I dismiss the tenant’s application for a monetary award beyond the return of the remainder of her security deposit.

Conclusion

I issue a monetary award in favour of the tenant as follows;

| Item | Amount |
|---|-----------------|
| Return of Security Deposit | \$237.50 |
| Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> (minus the outstanding monetary order amount) | 137.50 |
| Deduct Monetary Order amount to Landlord | -100.00 |
| Deduct Amount previously returned by landlord | -67.50 |
| Total Monetary Order | \$207.50 |

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: September 23, 2015

Residential Tenancy Branch

