



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNSD, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on August 1, 2015 for:

1. An Order cancelling a notice to end tenancy – Section 47;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to comply - Section 62;
4. An Order for the return of the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on September 9, 2015 for:

1. An Order to retain the security deposit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirmed that the tenancy has ended. I therefore dismiss the Tenant’s claim to cancel the notice to end tenancy and the claim for the Landlord’s compliance with the tenancy agreement or Act.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on September 19, 2014 and ended on August 20, 2015. Rent of \$1,100.00 was payable monthly on the 19th day of each month. At the outset of the tenancy the Landlord collected \$1,100.00 as a security deposit. No pet deposit was collected. The Parties did a walk through at move-in however the Landlord did not complete an inspection report. The Parties mutually conducted a move-out inspection and a report was completed. The Tenant provided its forwarding address on August 25, 2015. On August 21, 2015, the Landlord returned \$550.00 of the security deposit less the agreed utility amount of \$296.00 owed by the Tenant to the Landlord.

The Tenant claims return of double the remaining security deposit in the amount of \$1,100.00

There is no dispute that on July 23, 2015 the Landlord served the Tenant with a hand made and typed 30 day notice to end tenancy with an effective date of August 23, 2015. The Tenant states that the Landlord said they wanted use of the unit for two exchange students. There is no dispute that on August 11, 2105 the Landlord gave the Tenant a one month notice to end tenancy for cause. The reason for this notice was repeated late payment of rent. The Tenant did not dispute this notice. The Tenant states that they moved out of the unit as one of their children was to start attending school in September 2015 and the Tenant considered that it would be easier to find another unit for September than any later time. The Tenant claims \$1,100.00 as compensation for having to move out of the unit for the landlord's use.

The Landlord states that although the first notice did not set out any reason, the Landlord wanted to end the tenancy because the Tenant was paying rent late. The Landlord states that she does not recall saying anything about needing the unit for the students. The Landlord states that after finding out that the Landlord used the wrong form the Landlord served the Tenant with the right form. The Landlord states that two exchange students moved into the upper unit with the Landlord on September 3, 2015

and that the lower unit remains empty as the students are not allowed to live separate from the Landlord's and the lower unit is a separate unit.

The Landlord claims retention of the remaining \$550.00 of the security deposit to cover the cost of damages to a wall, carpet stains and leaving the unit not reasonably clean. The Landlord provided no documentary evidence to support its claim, such as a copy of the move-out inspection or receipts. The Landlord's application does not make a claim for damages to the unit only for the retention of the security deposit.

Analysis

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Overall I found the Landlord's evidence that their intention was to evict the Tenant for late payment to be more compelling and supported by the subsequent notice to end tenancy. I find it more likely that the Tenant chose to move out of the unit despite disputing the first notice after receiving the second notice on a valid form. I find therefore that the Tenant has not provided sufficient evidence to substantiate on a balance of probabilities that the Tenant received a notice to end tenancy for landlord's use and I dismiss the claim for one month's compensation.

Section 23 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit at move-in, the landlord must complete a condition inspection report, and the landlord must provide a copy to the tenant in accordance with the regulations. Section 24 of the Act provides that the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. As the Landlord did not complete an inspection report at move in I find that the Landlord's right to claim against the security deposit was extinguished at move-in. I therefore dismiss the Landlord's claim to retain the security

deposit. As the Landlord's claim has not been successful I decline to award recovery of the filing fee and in effect the Landlord's application is dismissed.

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. As the Landlord's right to claim against the security deposit was extinguished at move-in the only option the Landlord had at the end of the tenancy was to return the full deposit of \$1,100.00 less the agreed deduction for the utilities. As this was not done I find that the Landlord must now repay the Tenant double the original security deposit of \$1,100.00 plus zero interest in the amount of **\$2,200.00**. From this I deduct the **\$550.00** already returned to the Tenant leaving **\$1,650.00** owed to the Tenant. The Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,700.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,700.00**. 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: October 09, 2015

Residential Tenancy Branch

