Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

During the hearing the landlord identified that he had not received any evidence from the tenant prior to the hearing. The tenant testified that she served the landlord with her evidence by regular mail on November 25, 2015.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

Rule of Procedure 3.11 states that evidence must be served and submitted as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

As the tenant failed to follow the rules of procedure in the service of her documentary evidence and based on the landlord's testimony that he had not received any evidence by the time of the hearing I decline to accept the tenant's documentary evidence. I advised both parties that as a result, my decision would be based solely on the verbal testimony of both parties during the hearing with one exception.

I advised both parties that I had reviewed a previous decision dated April 21, 2015 that granted the landlord an order of possession, effective April 30, 2015 based on a 2 Month Notice to End Tenancy for Landlord's Use of Property. I also note that the decision recorded that the landlord was provided authourity to deduct the $50.00 filing fee for that Application for Dispute Resolution from the security deposit.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation; for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 51, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The parties agreed the tenancy began on August 1, 2014 as a 6 month fixed term tenancy that converted to a month to month tenancy in February 2015 for a monthly rent of $3,500.00 due on the 1st of each month with a security deposit of $1,750.00 paid.

The parties agreed the tenant vacated the rental unit as of April 29, 2015.

The parties also agree the landlord did not provide payment of compensation for the issuance of the 2 Month Notice in an amount equivalent to 1 month's rent.

The landlord testified that this case was not a normal situation and he should not be required to pay the compensation. He states that because the tenant had threatened to not move out he had to rent another property so that he could live there until the matters were resolved. Even then he states he did not know until April 29, 2015 that the tenant would be moving out.

The parties agreed the landlord returned a portion of the security deposit to the tenant but that he withheld $415.32 for utilities; $247.00 for utilities; $140.00 for utilities; and the previously mentioned $50.00 filing fee. The parties agree the landlord returned $897.68 to the tenant.

The tenant testified that she had not provided the landlord permission in writing that he could withhold any amounts from the deposit. The landlord testified the tenant did sign the move out condition inspection report agreeing to the condition but that it did not include authourization to retain any amounts.

The tenant she does not disagree that she owed the landlord the $415.32 in utilities and the $50.00 filing fee but she disputes that she owes him the additional $247.00 and $140.00 for utilities.

Analysis

Section 38(1) of the *Act* states, subject to Sections 38(3) and 38(4), that within 15 days after the later of the date the tenancy ends, and the landlord receives the tenant's forwarding address in writing, the landlord must either repay any security deposit or pet damage deposit to the tenant or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(3) allows a landlord to retain from a security deposit or a pet damage deposit an amount that the director has previously ordered the tenant to pay to the landlord, and at the end of the tenancy remains unpaid.

Section 38(4) states a landlord may retain an amount from a security deposit or a pet damage 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,

Section 38(6) states that if a landlord does not comply with Section 38(1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

From the testimony of both parties I find that at the time the landlord returned the deposit he had authourity to only deduct $50.00 as previously directed in the April 21, 2015. As such, I find the landlord should have returned $1,700.00 to the tenant. As the landlord returned only $897.68 I find the landlord has failed to comply with the requirements of Section 38(1) and the tenant is entitled to the return of double the amount of the security deposit less $50.00 or $3,400.00, pursuant to Section 38(6).

In addition, as the tenant agreed, in the hearing, that the landlord could retain $415.32 for utilities but disagreed with the amounts of $274.00 and $140.00 also held for utilities I order the landlord must also return these amounts.

If the landlord believes that the tenant owes for these amounts he is at liberty to pursue these claims by filing his on Application for Dispute Resolution seeking these monies.

Section 49 of the *Act* allows a landlord to end a tenancy if:

a. The landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
b. The landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit;
c. The landlord has all the necessary permits and approvals required by law, and intends in good faith, to:
    i. Demolish the rental unit;
    ii. Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
    iii. Convert the residential property to strata lots under the Strata Property Act;
    iv. Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;

v. Convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
vi. Convert the rental unit to a non-residential use.

Section 51 of the *Act* states that a tenant who receives a notice to end tenancy under Section 49 [landlord's use of property] 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.

As both parties agree the landlord ended the tenancy by issuing a notice under Section 49 I find the tenant is entitled to the compensation outlined in Section 51 of the *Act*.

Despite the landlord's position that these were special circumstances that would warrant that he should not have to pay the compensation I find nothing in the legislation that would exempt the landlord from this obligation under any circumstances.

Again, if the landlord feels he has suffered a loss as result of the tenant's breach of the *Act*, regulation or tenancy agreement he remains at liberty to file his own Application for Dispute Resolution within the limitations outlined in the *Act*.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$6,876.32** comprised of $3,500.00 compensation owed; $2,889.32 double the amount of the security deposit less amount already paid; $387.00 return of utilities withheld without authourity; and the $100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: December 02, 2015

Residential Tenancy Branch