



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC MNDC MNSD O SS

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlords' 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47; a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; authorization to obtain a return of all or a portion of his security deposit pursuant to section 38.

Both parties (both landlords and the tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant withdrew his application to cancel the 1 Month Notice to End Tenancy testifying that he has now vacated the rental unit. The tenant originally also applied for substituted service – this application was also withdrawn as the landlords confirmed receipt of the tenant's Application for Dispute Resolution. I find, based on the landlord's confirmation in testimony that the landlord was sufficiently served with the tenant's Application for Dispute Resolution package and evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to the return of all or a portion of his security deposit?

Background and Evidence

This tenancy began on May 1, 2015 on a month to month basis with the rental agreement reflecting a rental amount of \$675.00. The landlords testified that he reduced the tenant's rent to \$500.00 per month however the tenant provided contradictory testimony with respect to the rental amount. Both parties agree that the landlords continue to retain a \$337.50 paid by the tenant at the outset of this tenancy (April 1, 2015). The tenant testified that he provided notice to the landlords of his forwarding address on March 28, 2016 - the same date he vacated the rental unit. He did not provide his forwarding address to the landlords in written form: The tenant testified that he gave his forwarding address verbally to the landlords. He sought the return of his security deposit at this hearing and a total monetary award of \$3025.00 from the landlords.

The tenant testified that, over the course of his tenancy, his quiet enjoyment was affected. He testified that he was constantly bothered by the landlords. He testified that the landlords rented rooms in downstairs portion of his home with a common kitchen and bath area. The tenant testified that, after ongoing annoyance by the landlords, the tenant received a Notice to End Tenancy. While the tenant originally applied to dispute the notice, he ultimately vacated the rental unit prior to this hearing. He testified that he vacated the unit as a result of pressure by the landlords.

The tenant testified he incurred significant moving costs at the end of his tenancy and that he believes that the landlords should pay those costs. He testified that he spent approximately \$120.00 on pizza for the people who assisted him in moving. He was unable to provide any receipts with respect to these costs. He testified that he rented a truck but he was unable to provide a receipt or the exact cost of the truck rental. He testified that the landlords “threw him out” because he has a disability and was unable to clean his residence. He testified that the landlord was not justified in issuing the tenant an end to tenancy. He testified that he has been forced to find temporary housing because of the pressure to leave the rental unit and that he will have to move again.

The landlords testified that he had “good reason” to end this tenancy. He submitted that the tenant chose to vacate the residence and not await the hearing of his application to cancel the notice to end tenancy. The landlords testified that he has rules for the cleanliness of the common areas and that the tenant did not complete his chores, leaving his dishes in the sink for days, for example. He testified that the tenant often had a variety of guests at his residence. The landlords testified that he “extended” the end of tenancy date to accommodate the tenant but that he certainly had reason to ask him to leave. The landlords were adamant that they were not provided with a forwarding address by the tenant before the tenant filed for Dispute Application. Landlord G testified that he disagreed with all of the submissions of the tenant.

Analysis

The tenant applied to recover his security deposit and obtain a further monetary award. Section 38(1) of the *Act* requires a landlords, within 15 days of the end of the tenancy or the date on which the landlords 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 landlords to retain the deposit. If the landlords fail to comply with section 38(1), then the landlords may not make a claim against the deposit, and the landlords 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 (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 tenant vacated

the rental unit on March 28, 2016 but did not provide a forwarding address in writing to the landlords. The landlords testified that he only became aware of the tenant's forwarding address as a result of this application. I accept the testimony of Landlord G regarding receipt of the tenant's forwarding address. I note that the tenant acknowledges he did not provide his forwarding address in writing. I find that the landlords' obligation to return the tenant's security deposit or apply to retain the deposit had not been triggered at the time the tenant made this application. Therefore, I find that the tenant is not entitled to the recovery of his security deposit or any further application with respect to his security deposit as of the date of this hearing. However, I find that, as of the date that this decision is received by the landlord, the landlords' obligation to return the security deposit or to file to retain the deposit is triggered.

With respect to the tenant's application for a further monetary award from the landlords, section 67 of the *Act* provides the applicable test for the applicant claiming loss as a result of a tenancy. In order to claim for damage or loss under the *Act*, the applicant/tenant bears the burden of proof. In this case, the tenant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlords. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant has testified to the effects of the end of his tenancy. However, the tenant vacated the rental unit in compliance with the Notice to End Tenancy prior to this hearing thereby making his application to dispute and cancel the Notice to End Tenancy moot. The tenant sought costs related to his move-out of the rental unit. I find that there is insufficient evidence supplied by the tenant to support his claim that the notice to end tenancy was unjustified. The landlords submitted documentary evidence to suggest that the tenant had been warned with respect to his behavior at the residence including smoking in his room and having an unreasonable number of guests in his rental unit. The landlords also submitted letters of complaint from other occupants of the premises. I do not find that the landlords is obliged to pay the tenant's moving costs to his current temporary residence or to the next residence when he finds a more permanent home. Furthermore, I note that the tenant has not provided any receipts to verify actual monetary loss or costs related to his move.

The tenant also sought approximately 3 month's compensation for "unjust cause"; "breach"; and "contract" as described in his monetary order worksheet. I find that the tenant has supplied insufficient details and evidence to support any monetary claim. The tenant did not submit sufficient evidence to explain his application for a breach of contract or of the residential tenancy agreement. The tenant sought to explain over the course of the hearing how he was evicted for unjust cause. However, I do not find that, in all the circumstances, the testimony of the landlords as well as the tenant's decision to vacate the premises prior to this hearing allow me to make a decision that the tenancy was ended without justification.

Based on all of the evidence before me, documentary and testimonial, I find that the landlords' obligation to return the tenants' security or pet damage deposit in full within the required 15 days

had not yet been triggered. Further, I find that the tenant has provided insufficient details and evidence to support a claim for a monetary award.

I find that, as of the date that this decision is received, the landlords' obligation to return the security deposit or to file for dispute resolution to retain the deposit is triggered. Therefore, within 15 days of their receipt of this decision, the landlords must either return the tenant's security deposit in full or apply to the Residential Tenancy Branch to retain the tenant's security deposit.

Conclusion

I dismiss the tenant's application in its entirety. With respect to the tenant's application for a monetary order and compensation for his move, I dismiss the tenant's application without leave to reapply. With respect to the tenant's application for the return of his security deposit, I dismiss this portion of his application only with leave to reapply.

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: April 19, 2016

Residential Tenancy Branch