



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an application by the tenant for recovery of the security deposit and further monetary compensation. The tenant and the landlord attended the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to recovery of the security deposit?

Is the tenant entitled to further monetary compensation as claimed?

Background and Evidence

The tenancy began on August 15, 2014. At the outset of the tenancy, the tenant paid the landlord a security deposit of \$400.00. The tenancy ended on February 28, 2015.

The tenant submitted a copy of a text message dated August 11, 2015, containing her forwarding address and a request for return of the security deposit. The tenant also submitted a copy of the landlord's reply, dated August 11, 2015, in which the landlord wrote, in part, "the fact...is you owe me money." The landlord did not return the security deposit or apply for dispute resolution to keep the deposit.

The tenant stated that while she lived in the rental unit, cigarette smoke would come into her unit from the lady upstairs. The tenant stated that she asked the landlord to put weather stripping around the door and spray foam around the pipes but he did not want to do it. The tenant stated that she had to dispose of several of her possessions

because they smelled of cigarette smoke. The tenant stated that she got ill from the smell of cigarette smoke from her couch. The tenant stated that she was sick for three months after she moved out.

In support of her claim the tenant provided photographs and receipts for items she replaced and written statements from other people who noticed the smell of cigarette smoke in the rental unit.

The landlord responded that he did not see the tenant's email with her forwarding address. The landlord stated that there was nothing wrong with the weather stripping around the door; he just tightened it and it was okay. The landlord stated that before the tenancy started he cleaned and painted the whole unit, replaced carpeting and ionized the whole place to get rid of the smoke smell. The landlord stated that the tenant said everything was fine at the beginning of the tenancy. One week later the tenant wanted ionization done again, so he did. The landlord stated that he never had any other tenants complaining about smoke coming from other units.

Analysis

Security Deposit

Section 38 of the *Residential Tenancy Act* requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the amount of the security deposit.

In this case, the tenancy ended on February 28, 2015. I accept the tenant's evidence that on August 11, 2015 she did text the landlord with her forwarding address, and the landlord received and responded to that text on the same day. The landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. I therefore find that the tenant has established a claim for double recovery of the security deposit, in the amount of \$800.00.

In regard to the remainder of the tenant's claim, I cannot be satisfied that her possessions were irreparably damaged by cigarette smoke, or that it was due to the landlord's action or negligence that such damage occurred. I question the how much of an impact any cigarette smoke may have made the tenant so ill, considering that she

remained in the unit for more than six months and did not seek to resolve the situation earlier. I therefore dismiss the remainder of the tenant's claim.

As her application was partially successful, I find that the tenant is entitled to recover the \$50.00 filing fee for the cost of her application.

Conclusion

The tenant is entitled to double recovery of the security deposit and recovery of the filing fee.

I grant the tenant an order under section 67 for the balance due of \$850.00. 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: June 15, 2016

Residential Tenancy Branch