



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for return of double the security deposit - Section 38;
3. An Order for the Landlord's compliance - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord's right to claim against the security deposit extinguished?

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of a portion of the rent paid?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started in September 2013. Rent of \$845.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$422.50 as a security deposit. The Parties mutually conducted a walk-through of the unit at the outset of the tenancy however the Landlord did not fill out a condition inspection report and provide a copy to the Tenant within 15 days of the inspection. The Tenant gave notice to end the tenancy for April 30, 2016. The Tenant returned the keys to the Landlord and provided its forwarding address on April 21, 2015. No move-out inspection report was completed by the Landlord. The Landlord did not make an application to claim against the security deposit and did not return the security deposit to the Tenant.

The Tenant claims return of double the security deposit.

The Tenant states that when notice to end the tenancy was given to the Landlord they discussed a rent return if the Landlord was able to get a tenant sooner than April 30, 2016. The Tenant states that she moved out of the unit sometime earlier than April 11, 2016. The Tenant did not return the keys at that time. The Tenant states that on April 21, 2015 while at the unit the Landlord informed the Tenant that he wanted to offer an early move-in to a prospective tenant. The Tenant states that when asked about reimbursement of rent the Landlord made a calculation and stated "how does \$218.00 sound?" The Tenant states that she agreed to this amount and on that basis turned over the keys to the unit in good faith.

The Landlord states that he did agree to reimburse the Tenant any portion of rent that the Landlord received for April 2016 but that no rent was received from the next tenant. The Landlord states that the next tenant did move in early but the Landlord is not sure what day that occurred. The Landlord states that this new tenant was not charged rent as the Landlord offered an early move-in as incentive to get this desired tenant.

The Tenant noted on her monetary order worksheet a credit of \$100.00 for a vanity. The Tenant states that this was included in the worksheet to indicate that the Tenant was willing to reimburse the Landlord up to \$100.00 for damage to a vanity. The Tenant states that she had a quote for a repair and was going to have the vanity repaired however the Landlord did not agree at the time. The Landlord states that he does not agree that this amount covers the damage done to the vanity and does not agree to settle a possible future claim of the Landlord on this item. The Landlord indicates that he will seek an agreement with the Tenant outside of the hearing process on this claim. It is noted that the Landlord has not made any application in relation to any damage to the unit. It is also noted that the Landlord repeated several times that he would not honour or pay any monetary order issued from this hearing.

Analysis

Section 23 of the Act requires that at the start of a tenancy, a landlord and tenant must together inspect the condition of the rental unit and the Landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act provides that where a

landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. 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.

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 Landlord was required to return the security deposit to the Tenant within 15 days of the later of the end of the tenancy or receipt of the forwarding address. Based on the undisputed evidence that the Landlord received the Tenant's forwarding address on the same day as the keys to the unit were returned and as the Landlord did not return the security deposit I find that the Landlord must now return double the security deposit plus zero interest in the amount of **\$845.00** to the Tenant.

Section 37 of the Act provides that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends and that when a tenant vacates a unit the tenant must return the keys to the unit. Given the date of the Tenant's notice to end tenancy and the rental payment date, the Tenant could not have ended the tenancy any earlier than April 30, 2016 and was therefore liable for the full month's rent. The Tenant was also under no obligation to give up possession of the unit before 1:00 p.m. April 30, 2016. It is undisputed that prior to the end of tenancy date the Tenant agreed to give up the keys earlier than April 30, 2016. There is no evidence that the Tenant gave up the keys as a gift to the Landlord. There is no dispute that the amount offered by the Landlord and supported by the Witness letter was \$218.00. Given the circumstances of the Tenant leaving early, previously discussing the return of rent and giving the Landlord early possession of the unit I consider the Landlord's evidence of only agreeing to reimburse rent if monies were "received" to be disingenuous. I find that the Tenant has therefore substantiated on a balance of probabilities that the Tenant agreed to end the tenancy sooner than required in exchange for the reimbursement of rental monies from the Landlord. I find that the Tenant has therefore

substantiated an entitlement to **\$218.00** as offered by the Landlord for early possession of the unit.

As there was no agreement on the vanity I decline to deduct any amount from the Tenant's entitlement for any damage to the vanity.

As the Tenant's application has met with success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,163.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,163.00**. 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: November 4, 2016

Residential Tenancy Branch