



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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- 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 her security deposit, including double the amount, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the tenant entitled to a return of all or a portion of her security deposit, including double the amount?

Is the tenant entitled to a monetary order for compensation for damage or loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on June 1, 2013 for a one year fixed term ending May 31, 2014 and was subsequently renewed on a yearly basis for an additional one year fixed term. As of June 1, 2015 the monthly rent was \$1275.00 payable on the 1st day of each month. The tenant paid a security deposit of \$625.00 at the start of the tenancy, which the landlord continues to retain. The agreement did not include a requirement that the tenant must vacate the rental unit at the end of the lease.

The tenant is claiming compensation for one months' rent as the landlord failed to provide two months' notice under the Act. The tenant testified that she was not given proper Notice under the Act and feels the landlord should have given 2 Month Notice to End the Tenancy as the

landlord was selling the rental unit. The tenant submits that she had a verbal discussion with the landlord and the landlord's real estate agent on February 29, 2016 during which she was advised that she would need to vacate at the expiry of her lease as the landlord was going to sell the rental unit. The landlord advised her that the rental unit was listed for sale four days prior to their verbal discussion and that the real estate agent would need to start doing showings immediately. She asked the landlord what her options were and was advised that she could leave anytime.

The tenant also submits that the landlord placed an ad on Craigslist advertising the rental unit at a rate of \$1400.00 and also advertised that the suite would be rented at this rate in the real estate advertisement. After becoming frustrated with the number of showings for the rental unit and being advised by the landlord that unit had been re-rented effective June 1, 2016, the tenant voluntarily vacated the rental unit on May 31, 2016.

The tenant is also claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenant's forwarding address in writing. The tenant is relying on her application for dispute resolution as evidence of providing the forwarding address in writing. The tenant also submits she provided her forwarding address to the landlord by text message on June 16, 2016.

The tenant is also seeking compensation in the amount \$438.75 as loss suffered as a result of being displaced from the rental unit 1 ½ years prior due to a flood in an apartment above. The tenant submits that she was out of the rental suite for a period of 10-15 days while repairs were done to her rental unit. She submits that she had to stay with a friend for 5 days and also didn't have the ability to use her stove for 5 days. She states that landlord originally offered to compensate her at a rate of \$51.00/day.

The landlord's agent testified that it is not clear what compensation the tenant is seeking. He submits that the tenant originally advised the landlord of her plans to move back in February 2016. Although she stated she was going to move before the expiry of the lease she ended up staying until May 31, 2016. The landlord submits that they required access to the rental unit for showings as the property was listed for sale and they provided proper 24-hour notice under the Act. The landlord submits they also adjusted showings to accommodate the tenant's schedule when she was sick.

The landlord submits the tenant's security deposit was withheld due to damage to the rental unit. The landlord has not filed an application to retain the security deposit.

With respect to the tenant's claim for compensation due to displacement, the landlord submits that incident occurred over 1 ½ years ago and they were not aware of any outstanding issues.

Analysis

Section 51 (1) of the Act provides that a tenant who receives a Notice to End Tenancy for landlord's use of property is entitled to receive from the landlord an amount that is equivalent to one month's rent payable under the tenancy agreement.

I find the landlord did not provide the tenant with a Notice to End Tenancy. Based on the evidence, I find that the landlord only put the tenant on Notice that he was putting the rental property up for sale and that he would be requiring the tenant's cooperation for showings by the real estate agent. I find that upon being put on notice of the potential sale, the tenant advised the landlord that she would be vacating before the expiry of the lease. The tenant eventually vacated the rental unit on May 31, 2016 on her own accord after becoming frustrated with the number of showings. The tenant was correct in her interpretation that the tenancy agreement did not require her to vacate at the end of the lease. The tenant could have simply chose to not vacate the rental unit until she was provided proper 2 Month Notice under the Act. This part of the tenant's application is dismissed.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment, which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenant is relying on the service of the application for dispute resolution as the method of providing the landlord with a forwarding address for the purpose of requesting a return of the security deposit. The filing of an application for dispute resolution is not on its own an accepted means of providing a forwarding address for the purposes of the return of the security deposit. An applicant must be able to provide evidence of providing a forwarding address in writing prior to making the application. This puts the landlord on proper notice that they have 15 days to either return the security deposit or make an application claiming against the deposit. The tenant also submits that a forwarding address was provided to the landlord by text message and e-mail. Text message and e-mail are not an acceptable method of service of documents under section 88 of the Act. I dismiss the tenant's claim for double the security deposit with leave to reapply after serving the landlord with a forwarding address in writing in a manner permitted under section 88 of the Act.

The landlord would have 15 days from receipt of the forwarding address, to either return the deposit in full or make an application claiming against the deposit. The landlord is cautioned that if its right to claim against the deposit for damages is extinguished under section 24 (2) of the Act [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) of the Act [*landlord failure to meet end of tenancy condition report requirements*] he may be liable to pay double the security deposit if it is not returned within the 15 day period.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

I find the tenant has not established that the landlord failed to comply with the Act, the regulations or the tenancy agreement. The tenant is seeking compensation as a result of being displaced from her unit as a result of a flood in an apartment above. There was no evidence that the displacement was caused or worsened by the actions or neglect of the landlord. Further, the tenant did not provide any evidence such as receipts for costs incurred during the displacement in support of the alleged losses. This part of the tenant's application is dismissed.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

The tenant's application for a monetary order for compensation for loss is dismissed without leave to reapply. The tenant's claim requesting return of the security deposit is dismissed 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: December 09, 2016

Residential Tenancy Branch