



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, RR, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of rent, return of the security deposit, for reduced rent and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

During the hearing, the tenant testified that she had moved out on October 31, 2016. Since the tenancy has ended, the tenant's claim for a rent reduction is dismissed.

Issues to be decided

Is the tenant entitled to return of rent, return of the security deposit and the filing fee?

Background and Evidence

The tenancy started on August 01, 2016. There is no written tenancy agreement. The monthly rent was \$850.00 payable on the first of the month. At the start of the tenancy, the tenant paid a security deposit in the amount of \$425.00. The rental unit is a self-contained suite located on the upper floor of the landlord's home. The upper floor has a total of five bedrooms and the landlord occupies the remainder of the upper floor. The lower floor has a two bedroom suite rented out separately.

Both parties agreed that this tenancy started as a temporary arrangement. The tenant had recently sold her home and was seeking temporary accommodation while she went about looking for a home to purchase. The parties were friends prior to the start of tenancy. The landlord informed the tenant that the lower level of her home would be available on October 01, 2016 but the tenant needed something immediately. The landlord offered to rent a portion of her living space on the upper level of her home to the tenant on a temporary basis until the lower level suite became available.

The rental unit on the upper level was furnished and rented at \$28.00 per day. The tenant agreed and moved in on August 01, 2016.

The parties' testimony was contradictory regarding the size of the rental unit. The tenant stated that she was promised two bedrooms but was allowed to use only one. The landlord stated that the two bedroom suite that the tenant was referring to was on the lower level suite which was not available until October 01, 2016. The landlord testified that the tenant was provided with a one bedroom suite on the upper floor at a lower rent.

The tenant stated that during the tenancy the landlord harassed her by changing parking arrangements and repeatedly asking her to move out. The tenant also stated that the electrical connections were inadequate for the use of a microwave oven and the landlord resolved this by running an extension cord from the outside of the suite under the door to the microwave oven. The tenant stated that this was unsafe and posed a tripping hazard.

The tenant added that since she felt very uncomfortable in the rental unit and due to harassment by the landlord, the tenant felt pressured to move out by October 31, 2016 and did so on that date. The tenant stated that she had not found a place to move to, so she booked a hotel room and is claiming \$500.00 from the landlord for the cost of her hotel stay.

The tenant moved out on October 31, 2016 but made this application on October 30, 2016, prior to moving out. The landlord was served with notice of this hearing on November 07, 2016. The landlord returned \$225.00 of the deposit to the tenant and retained \$200.00 towards carpet cleaning. The tenant did not agree to the deduction.

The tenant is also claiming the return of rent for the months of August, September and October 2016 due to loss of quiet enjoyment.

The tenant is claiming the following:

| | | |
|----|-----------------------------------------------|-------------------|
| 1. | Return of security deposit | \$200.00 |
| 2. | Return of rent for August, September, October | \$2,550.00 |
| 3. | Hotel stay | \$500.00 |
| 3. | Filing fee | \$100.00 |
| | Total | \$3,350.00 |

Analysis

Based on the verbal testimony and documentary evidence filed by both parties, I find that by making application for the return of the security deposit prior to moving out, the tenant made a premature application.

In regards to the landlord's claims against the security deposit, relating to loss that she may have suffered, I am not able to consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to make a separate application for dispute resolution and to resubmit her evidence. Therefore, I find that the landlord must return the balance of the security deposit and accordingly I award the tenant \$200.00 towards the return of the balance of the security deposit.

Both parties agreed that the tenancy was a temporary arrangement and therefore the parties entered into a month to month agreement. The landlord agreed to rent a self-contained portion of her living space to the tenant until the other suite in the house became available. The parties had some disagreements related to the living arrangements and the tenant felt she was being harassed by the landlord to move out. The landlord did not serve the tenant with a notice to end tenancy, but the tenant chose to move out and did so on October 31, 2016.

The landlord and tenant had different versions of events that led to the disagreements between them. The tenant was not able to provide any independent evidence to support her claim of harassment. Her case is entirely dependent on her version of events, a version which is disputed by the landlord. I have no basis for favoring one version over the other.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. Every tenancy agreement contains an implied covenant of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

With regard to the tenant's monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the three months of the tenancy were very stressful on both parties for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for harassment and therefore the tenants' claim for compensation in the amount of three months' rent is dismissed.

The tenant made a decision to move out and therefore the landlord is not responsible for the cost incurred by the tenant to move into a hotel. Accordingly the tenant's claim for \$500.00 is dismissed. The tenant has not proven her case and therefore must also bear the cost of filing this application.

I order the landlord to return the balance of the deposit in the amount of \$200.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for \$200.00.

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 13, 2016

Residential Tenancy Branch