



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Zoro Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD OLC FF

Introduction

This hearing dealt with the tenant's application for recovery of the security deposit, monetary compensation for damage or loss, an order that the landlord comply with the Act, regulation or tenancy agreement and recovery of her filing fee. The tenant and two agents for the landlord participated in 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.

As the tenancy has already ended, it was not necessary for me to consider the portion of the tenant's application regarding an order that the landlord comply with the Act, regulation or tenancy agreement.

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?
Is the tenant entitled to recovery of her filing fee?

Background and Evidence

On September 27, 2016 the landlord and the tenant signed an agreement for a tenancy that would begin on October 1, 2016. On that date the tenant paid the landlord a security deposit of \$700.00. The tenancy was to be for a fixed term of one year. In an

addendum to the agreement, if the tenant breached the fixed term, she would be required to pay "the sum of \$700.00 (security deposit) as liquidated damages." On September 30, 2016 the tenant paid the landlord \$1,400.00 as rent for October 2016.

The tenant did not move into the rental unit. The landlord did not return the security deposit or any rent and did not make an application to keep the deposit.

Tenant's Evidence

The tenant stated that when she viewed the rental unit before agreeing to rent it, it was hard to see things because the other tenants and their possessions were there. The tenant stated that the other tenants told her that there were bugs.

The tenant stated that she attended the rental unit on October 3, 2016 for a walk-through, and she noticed some roaches. The tenant stated that an agent for the landlord put down a glue trap and told her that would solve any problem.

The tenant stated that she arrived at the rental unit on October 4, 2016, approximately one hour before her belongings would arrive, and she realized that the unit was heavily infested with German roaches. The tenant took pictures of the roaches and then arranged for her belongings to be put in storage. The tenant stated that she tried to speak to the building manage but was unable to reach him.

The tenant stated that on October 5, 2016 she tried calling the landlord several times and then visited their office. The tenant stated that she asked the office administrator to investigate the rental unit with her but the office administrator refused.

The tenant stated that On October 6, 2016 she gave the landlord a letter, in the presence of a witness. In the letter, the tenant indicated that because the rental unit was infested with roaches, she considered the tenancy dissolved. The tenant provided her forwarding address and requested return of her security deposit and rent. The tenant stated that on October 12, 2016 she followed up with a second letter, which she sent to the landlord by registered mail.

The tenant submitted that the landlord breached the tenancy agreement by failing to provide it in a liveable condition. The tenant applied for return of her \$700.00 security deposit and October 2016 rent of \$1,400.00; as well as \$127.05 for her storage costs and recovery of her \$100.00 filing fee.

Landlord's Reply

The landlord acknowledged that when the tenant first viewed the rental unit, one of the current tenants said that there were some bugs. The landlord stated that on October 5, 2016 the tenant told them that she was cancelling her tenancy because of roaches. The landlord stated that they tried to explain that they have a pest control company and can take care of the roaches. The landlord stated that the office administrator refused to look at the apartment on October 5, 2016 because that is not her job.

The landlord stated that they did not receive the tenant's written statement on October 5, 2016, but they did receive the second letter on October 14, 2016. The landlord stated that the tenant did not return the keys, so she was still occupying the rental unit. The landlord stated that they were not required to return the tenant's security deposit because she breached the lease and the landlord was therefore entitled to keep the deposit as liquidated damages.

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, I find that the tenancy ended on October 6, 2016, when the tenant served the landlord with her written statement that she was not moving in. The tenant's witness signed the bottom of the letter, and I accept the tenant's evidence that she did personally serve the landlord with the letter on that date. A tenancy does not necessarily continue until the tenant has returned the keys, and I find that in this case the landlord had received clear notice that the tenant was not moving in. The landlord could have changed the locks at that time.

As set out in the Residential Tenancy Regulation section 5(3), a landlord may not charge a fee in relation to any cost incurred by the landlord to repay a deposit. Therefore, the landlord could not automatically hold the security deposit as payment of the liquidated damages amount.

The tenant provided her forwarding address in writing in the October 6, 2016 letter. 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. The landlord therefore must pay the tenant double recovery of the security deposit, in the amount of \$1,400.00.

In regard to October 2016 rent, I find as follows. As I have found that the tenancy ended on October 6, 2016, and the landlord did not apply for lost revenue after that date, the tenant is entitled to return of prorated rent from October 7 to October 31, in the amount of \$1,083.87.

I find that the tenant is not entitled to recovery of her storage fee. Under section 45(3) of the Act, if the tenant believes that the landlord has failed to comply with a material term of the tenancy agreement, the tenant may give the landlord written notice of the breach and if the landlord has not corrected the situation within a reasonable period after the tenant gives written notice, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. In this case the tenant chose to end the tenancy without first giving the landlord an opportunity to correct the problem. I therefore dismiss the portion of the tenant's application regarding storage fees.

As her application was mostly successful, the tenant is also entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$2,583.87. 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: January 23, 2017

Residential Tenancy Branch