



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an application by the tenant for recovery of the balance of the security deposit and further monetary compensation, as well as recovery of the filing fee. The tenant and the landlord attended the teleconference hearing.

At the outset of the hearing, the landlord confirmed that he had received the tenant's application and 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 balance of the security deposit?

Is the tenant entitled to further monetary compensation as claimed?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on May 15, 2015. The monthly rent, due in advance on the first day of each month, was \$2,000.00. At the beginning of the tenancy the tenant paid the landlord a security deposit of \$1,000.00. The tenancy was a verbal agreement only. The parties did not dispute the terms of the tenancy agreement.

On May 24, 2016 the landlord gave the tenant a notice to end tenancy for landlord's use. The notice indicated that the reason for ending the tenancy was that the landlord had sold the house and the new owners intended to occupy it. The tenant stated that she gave the landlord a 10-day notice and vacated the rental unit on June 1, 2016. On June 5, 2016 the landlord returned all of the security deposit except \$280.00. The landlord did not have the tenant's written permission to retain that amount; nor did he

make an application for an order allowing him to retain it. The tenant has claimed recovery of the balance of the security deposit.

The tenant stated that there was a hot tub on the rental property that did not work when the tenancy began. The tenant submitted that part of the verbal tenancy agreement was that they would have a working hot tub, but the landlord wanted some time to repair it. The tenant stated that in October 2015 she paid to have the hot tub repaired, with the agreement that the landlord would pay for half of the cost. The tenant stated that the landlord did not ever reimburse her for any part of the hot tub repair cost, and the hot tub was working at the end of the tenancy.

The tenant has claimed \$2,000.00 as compensation equivalent to one month's rent, as she was served with a two-month notice to end tenancy and she did not receive one month of free rent as compensation.

The landlord replied as follows. The landlord stated that the house was rented to the tenant without a working hot tub and the tenants knew it. The landlord stated that the tenant wanted to get it fixed on their own dime, though there was some talk about him kicking in half of the cost. The landlord stated that he was unable to check if the hot tub was working at the end of the tenancy because there was no water in it, and he does not know if it works now because he has not been in touch with the new owners since he sold the house.

Analysis

The landlord did not have the tenant's written authorization to make any deduction from the security deposit and he did not make an application to keep the deposit. Therefore, the tenant is entitled to recovery of the balance of the security deposit, in the amount of \$280.00.

Section 51 of the Act sets out that a tenant who receives a notice to end tenancy for landlord's use is entitled to compensation equivalent to one month's rent. The compensation may be in the form of one of the following:

- 1) financial restitution, where the landlord pays the tenant the equivalent of one month's rent on or before the effective date of the two month notice,
- 2) occupancy, where the tenant withholds the last month's rent and occupies the rental unit rent-free for that last month, or
- 3) a combination of both.

Under section 50 of the Act, a tenant who has received a notice to end tenancy for landlord's use may end the tenancy early by giving a written 10 day notice to end the tenancy on a date earlier than the effective date of the landlord's notice. The tenant's 10 day notice does not affect the tenant's right to compensation equivalent to one month's rent. The tenant in this case was served with a notice to end tenancy for landlord's use, did not receive compensation in the form of free rent, and is entitled to compensation of \$2,000.00, the equivalent of one month's rent.

The tenants did not have a written tenancy agreement, and they disagree over whether a working hot tub was to be included. The tenant did not include the cost for half or all the hot tub repair in her application, and the landlord is entitled to know the full case against him. I therefore find that the tenant has failed to provide sufficient evidence to establish that she is entitled to any compensation for the hot tub repairs.

As her application was 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 \$2,380.00. 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: February 10, 2017

Residential Tenancy Branch

