



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, OPT, AAT, FF, MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord return the tenant's personal property; for an Order of Possession of the rental unit; for an order allowing access to (or from) the rental unit for the tenant or the tenant's guests; and to recover the filing fee from the landlord for the cost of the application. The details portion of the tenant's application also seeks return of rent paid for January, 2017.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the parties agreed that the tenancy has ended and therefore I dismiss the tenant's applications for an Order of Possession of the rental unit and for an order allowing access to (or from) the rental unit for the tenant or the tenant's guests.

Also, during the course of the hearing, the parties agreed to deal with the return of the tenant's personal possessions, and I leave it to the parties to do so, and dismiss that portion of the tenant's application with leave to reapply.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?
- Has the tenant established a monetary claim as against the landlord for recovery of rent paid for January, 2017?

Background and Evidence

The tenant testified that this tenancy began perhaps in August, 2016, but does not recall the date, or whether or not the tenancy was on a month-to-month basis or for a fixed term. However, rent in the amount of \$735.00 was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$367.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the landlord resides in the upper level. No move-in or move-out condition inspection reports were completed.

The tenant further testified that on January 7, 2017 about 6:00 p.m. she had been at her boyfriend's home and went to the rental unit to get her uniform for work. When she arrived, she saw the landlord and his wife inside the rental unit. The tenant went in to get her uniform, and then went to work, starting at 7:00 p.m. That evening, the tenant received an email from the landlord, a copy of which has been provided, stating that the locks to the rental unit had been changed. It also states: "Do not attempt to attend the property as the police will be called immediately. You can have a certified mover contact me within 10 days to get your belongings otherwise they will be disposed of."

The tenant works night shift, and attended the rental unit the following morning. The landlord was at work and his wife would not answer the door, so the tenant called police. When the landlord's wife answered the door, she advised that she did not have a key to gain access to the rental unit and would have to wait for the landlord to return from work. The tenant has not been able to access the rental unit since except on one occasion on January 23, 2017 to retrieve some personal items with police presence.

The landlord did not serve the tenant with a notice to end the tenancy. The tenant's furniture and other items remain in the rental unit, and the landlord's actions have caused the tenant a lot of stress.

The tenant provided the landlord with a forwarding address in writing with the Tenant's Application for Dispute Resolution served January 23, 2017. The tenant seeks return of January's rent, the security deposit and the \$100.00 filing fee for the cost of this application.

The landlord testified that a move-in condition inspection report was completed by the parties in September, 2016 and believes he gave a copy to the tenant.

This was more of a safety issue than a landlord/tenant issue, in that there is extensive damage to the rental unit. The by-law requires an interconnected alarm system to both the rental unit and the landlord's unit, but the tenant and guests removed the alarm system downstairs to ensure drug use wouldn't be detected by the landlord.

The landlord also testified that the date of the email advising the tenant that locks had been changed is dated January 10, 2017 at 3:33 a.m., although he did not send it at 3:33 a.m., and that must be the time the tenant opened the email.

The landlord has not made an application for dispute resolution and has not served the tenant with a notice to end the tenancy using any *Residential Tenancy Act* forms.

The landlord further testified that police have advised that police presence is preferable for return of the tenant's belongings, and the tenant needs to make those arrangements.

Analysis

I disagree with the landlord that this is not a landlord/tenant issue. The *Residential Tenancy Act* applies, which is not disputed by either party.

If a landlord has cause to end a tenancy, the *Act* provides for alternate methods, none of which include changing the locks and denying the tenant entry to the rental unit. I therefore find that the landlord has breached the *Act*, and the tenant is entitled to compensation.

The parties do not agree as to what date the landlord changed the locks and there is conflicting evidence about that. However, the experience has caused the tenant stress, and as a result of the landlord's breach of the *Act*, denying the tenant access to her home and personal possessions, I find that the tenant has established return of January's rent.

The landlord has not returned the security deposit to the tenant. The law requires a landlord to return a tenant's security deposit in full or to make an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must repay the tenant double the amount. Today is the 15th day, and the landlord has not yet filed an application for dispute resolution. I find it premature, particularly since there is conflicting testimony about whether or not a move-in condition inspection report was completed, to order that the tenant recover the security deposit, and I dismiss that portion of the tenant's claim with leave to reapply.

Since the tenant has been partially successful with the application, the tenant is entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application for an Order of Possession of the rental unit is hereby dismissed.

The tenant's application for an order allowing access to (or from) the rental unit for the tenant or the tenant's guests is hereby dismissed.

The tenant's application for an order that the landlord return the tenant's personal possessions is hereby dismissed with leave to reapply.

The tenant's application for a monetary order for return of all or part of the security deposit is hereby dismissed with leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$835.00.

This order is final and binding and may be enforced.

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 07, 2017

Residential Tenancy Branch