



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC MNSD OLC PSF LRE RR and FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- 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 their security and pet damage deposit pursuant to section 38;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with copies of the tenants' Application and evidence.

The landlord submitted evidence in response to the tenants' application, but the tenants indicated that they did not receive it. Rule 3.15 of the RTB's Rules of Procedure establishes that an applicant must receive evidence from the respondent not less than 7

days before the hearing. The landlord acknowledged that she failed to follow Rule 3.15 and did not oppose the exclusion of the late evidence. Accordingly, the landlord's evidence package is excluded for the purposes of this hearing.

The tenants testified during the hearing that they had moved out on December 25, 2016 pursuant to the 1 Month Notice to End Tenancy for Cause (1 Month Notice) served to her by registered mail on November 19, 2016. I note that in the tenants' application they had applied to cancel a 2 Month Notice to End Tenancy for Landlord Use (2 Month Notice). This was in error, and should have been an application to cancel a 1 Month Notice, as no 2 Month Notice was issued. In their application, the tenants are also seeking financial compensation for the landlord's noncompliance with the *Act*, for a return of her security and pet damage deposits, as well as the recovery of her filing fee. As the tenants' application pertains to a tenancy that has now ended, I will only be considering the monetary component of the tenants' application. The remainder of her application is cancelled.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of her security and pet damage deposits (the deposits) pursuant to section 38 of the *Act*?

Are the tenants entitled to a monetary award for compensation or losses arising out of this tenancy?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenants testified that this tenancy ended on December 25, 2016 when they had moved out of the rental suite. The landlord indicated that she was away on vacation during the month of December, and was unaware of when the tenants had moved out since there was no communication from the tenants. Monthly rent was set at \$1,350.00 payable on the first of each month. They testified that a security deposit and a pet damage deposit in the amounts of \$687.50 each, were paid at the beginning of the tenancy. The landlord still continues to hold both deposits totalling \$1,375.00. The tenants are seeking compensation in the amount of double the deposits as they have not received a return of any portion of their deposits, and did not give their written authorization to allow the landlord to retain their security and pet damage deposits.

Tenant MC (the tenant) testified to the following account of how the tenancy had ended, and why they are seeking further monetary compensation in the amount of \$3,925.00, as outlined in their monetary worksheet. In addition to the above monetary claim for the

deposits and filing fee, the tenants are also seeking compensation for their moving costs, as well as \$100.00 per day (total 6 days) for meals. The landlord had received a notice from the municipality stating that the rental suite was illegal, and required an inspection. A copy of this letter, dated October 31, 2016 was submitted as part of the tenants' evidence. The tenant testified that she had confirmed this with the landlord, whose occupation was a realtor, and the landlord confirmed the suite was indeed illegal. On November 14, 2016, the landlord removed the hood fan and stove from the kitchen, and following the inspection the landlord also removed the door locks and doorknob from the door in the foyer of the home. The tenant testified that she called the RCMP, and subsequently received the 1 Month Notice from the landlord with a move out date of December 31, 2016.

The tenant, DG, testified that the landlord had bullied them into complying with the landlord's demands only because they did not know their rights. She testified that they did agree to move the stove to the garage, but did not agree to the removal of the lock. She stated that they were simply covering up for the landlord because they felt they did not have a choice.

The landlord testified that the tenant was not fully aware of the agreements that were made between her mother, Tenant DG, and herself, and that the tenant's testimony was not accurate. The landlord testified that the mother had moved the stove herself, and it was moved to the office, and not the garage. She testified that she had no choice but to remove the lock as the lock was broken and stuck, and the locksmith had brought the wrong replacement lock. She did agree that the city required the removal of the lock and replacement of a regular lock that didn't require a key. She stated that the reason for the 1 Month Notice was the tenants could not afford the monthly rent, and she testified that she gave ample time for them to move. She testified that she was out of the country and was unaware of when the tenants had moved out. She testified that she did do a move-in inspection as required by the *Act*. The landlord indicated that the rental unit still contained beer bottles and dog food.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event

is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the tenants' application for the return of their deposits was submitted on November 29, 2016, well before this tenancy ended. In accordance with the principles of natural justice, the landlord can only respond to the case that was then presented against her at the time of the original application for dispute resolution, unless the tenants amended their original application. As no amendment was made to the tenants' original application, I find that the tenants' application to obtain the return of their security deposit was premature. I also note that the landlord testified in the hearing that she was unaware of when the tenants had actually moved out. In so doing, I also note that the landlord was still within the 15-day time period for returning the deposits even at the time of this hearing. It also remains unclear as to when or even if the tenants have provided the landlord with their forwarding address in writing for the purpose of returning the deposits. I dismiss this portion of the tenants' application with leave to reapply. If the tenants have not provided the landlord with their forwarding address in writing, they need to do so in order to commence the 15-day time period for requesting the return of the tenants' deposits.

The tenants applied for further compensation from the landlord for the losses they had incurred as part of this tenancy, specifically the cost of their meals and moving costs. Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, an arbitrator may determine the amount of the damages or losses and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the *Act*.

In the tenants' monetary worksheet, the tenants provided dollar figures for the meals and moving costs, but no oral testimony was provided during the hearing in support of these claims, nor were receipts submitted to demonstrate the financial loss incurred by the tenants. In the absence of this important evidence to support their application for a monetary award, I dismiss the tenant's' application for a monetary award for these two items.

The tenants had also submitted, in their evidence, a request for compensation for three month's rent as well as the cost of a fireplace repair. I note that these items were not included in the monetary worksheet provided by the tenants, and no submissions were made regarding these two items during the hearing, and as I did not hear any testimony from either party regarding these claims I decline to issue a monetary award for these two items.

As the tenants were not successful in their applications, I dismiss their application for the recovery of the filing fee.

Conclusion

As the tenants had moved out of the rental suite, the tenants' applications in regards to the 1 Month Notice are cancelled. The tenants' application to cancel the landlord's 2 Month Notice is cancelled as no such Notice was issued to the tenants.

I dismiss the tenants' application for a monetary award for the return of their security and pet deposits with leave the re-apply. I order the landlord to deal with the tenants' security deposit as required by the *Act*. The remainder of the tenants' monetary application is dismissed.

As the tenants were not successful in their applications, I dismiss their application for the recovery of their filing fee.

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 3, 2017

Residential Tenancy Branch