



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnsd, mndc, ff

Introduction

The tenant applies for a monetary order for the return of her security deposit and pet damage deposit (doubled), and for compensation for loss of quiet enjoyment in the final month of the tenancy, and the recovery of her filing fee.

Issue(s) to be Decided

Is the tenant entitled to the return of the deposits, doubled?

Is the tenant entitled to compensation for a breach of quiet enjoyment?

Is the tenant entitled to recovery of her filing fee?

Background and Evidence

This tenancy began on April 1, 2014 and ended on February 1, 2015. The tenant paid a security deposit of \$550.00, and a pet damage deposit of \$275.00. Neither deposit has been returned. The tenant left her forwarding address in writing in the mailbox for the landlord, who acknowledge he received it on about February 20, 2015.

The landlord testified he has recently filed a claim as against the tenant for cleaning and damage to the premises. No hearing has been set yet for this claim.

The tenant alleged the landlord's music disturbed her especially on weekends in the final month of the tenancy. She sent him numerous texts to turn it down, but he never responded. She acknowledges that her evidence supports complaints of only one such incident. She also testified he entered her premises in the final month to take a remote control. The landlord testified there was only one incident of noise, and that he had given the tenant notice that he required both the shaw box as well as the remote from her, and had to enter to retrieve the remote to provide to the Shaw representative.

Analysis

I accept that this tenancy ended February 1, 2015. This date is important, as any claim filed regarding this tenancy must be filed within 2 years of the ending of the tenancy. The tenant's claim was filed January 27, 2015, which lies within the 2 year limitation period for filing claims, specified in section 96(1) of the Residential Tenancy Act.

Section 38 of the Residential Tenancy Act governs the dispute at hand regarding the security deposit and pet damage deposit. Under section 38(1) of the Residential Tenancy Act, a landlord has an obligation to either file a claim to retain the tenant's deposit, or to return a tenant's security deposit, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, whichever is later. I accept that the landlord was provided with the tenant's forwarding address on February 20, 2015. The 15 day period therefore ended March 7, 2015, but no claim was filed by the landlord by that date, and the deposits were never returned. The landlord's apparent current claim is made well after the 15 day period set out in section 38 of the Act, and whether or not he has a legitimate claim for damage to the premises or loss of rent, that claim is separate from the tenant's claim to recover her deposits.

There is no evidence before me that any of the exceptions to the landlord's obligations under section 38(1) apply in this case. There is no evidence that any statutory grounds extinguish the tenant's right to claim the deposits. As the landlord failed to comply with section 38(1), the landlord must now pay the tenant double the amount of the security deposit and pet deposit, as required under section 38(6). The tenant is awarded \$1,100.00 for the security deposit, and \$550.00 for the pet damage deposit.

The tenant submits she suffered a loss of quiet enjoyment in the final month of her tenancy. The covenant of quiet enjoyment promises that a tenant shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with the tenancy for all usual purposes. 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 must show that there has been substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions or inactions, that renders the premises, or a portion of the premises, unfit for occupancy for the purposes for which they were leased.

In making this determination, I must take into consideration the seriousness of the alleged breach, and the length of time over which the situation existed. In this regard, the tenant provides supporting evidence of one incident of late night noise, and testified as to one alleged incident of an improper entry by the landlord. While there may have been more incidents of weekend noise, the tenant's evidence as a whole fails to establish a breach that is serious and substantial enough to demonstrate a loss of quiet enjoyment. This portion of the claim is dismissed.

As the tenant is successful with her claim regarding the deposits, she is awarded recovery of the filing fee of \$100.00.

Conclusion

The tenant is entitled to double the deposits, and recovery of her filing fee. The total the landlord must pay to the tenant is \$1,750.00.

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: March 20, 2017

Residential Tenancy Branch