



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement, as well as seeking monetary compensation for return of rent paid, return of the security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on March 8, 2017 and April 24, 2017. Both parties called into the hearing on March 8, 2017 which was adjourned to April 24, 2017.

Only the Tenant called into the hearing on April 24, 2017. She gave affirmed testimony and as provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Residential Tenancy Branch records indicate the Notice of Adjourned Hearing was mailed to the Landlord on March 22, 2017. I therefore proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. What should the happen with the Tenant's security deposit?

3. Should the Tenant recover the filing fee paid?

Background Evidence

Introduced in evidence was a copy of the Residential Tenancy Agreement signed September 29, 2016 indicating this five month fixed term tenancy was to end February 28, 2017. Monthly rent was payable in the amount of \$425.00. The Tenant paid a security deposit in the amount of \$212.50 and a pet damage deposit in the amount of \$87.50 for a total of \$300.00.

The Tenant testified that the Landlord's mother owns the rental building. She shared a kitchen with the Landlord.

The Tenant testified that on October 13, 2016, the Landlord "kicked her out" and told her to be out of the rental home before the end of October 2016. She stated that she asked him why he wanted her to move out and he said "because I say so, this is Canada, this is how we do it, not your freaking Taiwan; if you don't do it, I will throw your stuff on the street". The Tenant stated that she was very afraid of the Landlord and took photos of her room at that time as she was afraid he would dispose of her items. These photos were provided in evidence.

She said that she went to work the next day (October 14, 2016) and decided to stay with her boyfriend. She said that she spoke to the R.C.M.P. who suggested that she stay somewhere else for her safety. She said when she went to retrieve a few items from her room she saw a sticky note from the Landlord wherein he wrote that "I'm showing your room tomorrow and maybe again on Tuesday". The Tenant provided a photo of this sticky note in evidence.

The Tenant then sent a text message to the Landlord:

"hi [Landlord's first name], I saw the note you left on my door..you can't show my room to other people without me present plus my stuff is there and I still live there legally; I know my rights"

"Apparently you don't. Read the act. If you continue with your diciulousness it will end badly for you. I guarantee it. I got pictures, video etc. And if you want to act crazy again I will get the RCMP involved. This isn't Taiwan, you can't act this way in this country."

"yes I do have my rights. You haven't told me what have I done an the things you say about me acting crazy are ridiculous, please prove it. And again, this is not about

Taiwan or Canada, it is about doing things right. I know this is Canada so I follow the law...I have already contacted the rcmp, here is the file [portion cut off on screen shot]

Scared. You never told me what I have done or anything I don't that bothered you, I wonder how I screwed up?? You do and say whatever you want and you can't treat people like that by being racists and verbally abusive. I don't have to and won't take this shit. You have cops in your family..Great maybe they can enlighten your ignorance".

[October 16, 2016 8:22 a.m.]

"[Tenant's first name] you got till 1pm to get the stuff you left in my carport out of there. After that I will assume you don't want it and toss it. I doubts it's worth the \$500. And if the bears scattered any of your stuff in the yard I will charge you for clean up, idiot. Left you a letter. Make sure u read it."

"[Landlord's first name], I left nothing in your carport, since you already thrown my stuff outside the house; I will go get it by 1pm. Please prepare and return my \$300 deposit and half

The Tenant testified that she attended the rental unit on October 16, 2016 and all of her belongings were outside. She stated that she knocked on the rental unit door and he did not answer. She stated that at this time she also discovered that her key did not work.

The Tenant filed a Monetary Order worksheet which confirmed she sought recovery for the following:

Security deposit and pet damage deposit	\$300.00
Door hook	\$9.05
3 m hooks	\$10.98
Toilet paper	\$14.99
Paper towel	\$18.69
Return October rent	\$425.00
Filing fee	\$100.00
Cost of registered mail	\$23.89
TOTAL	\$1,327.60

The Tenant testified that on March 22, 2017, following receipt of my Interim Decision and Notice of Adjourned Hearing, the Landlord dropped off a letter to her address. In this letter the Landlord writes:

Analysis

A Section 44 of the *Residential Tenancy Act*

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant undisputed evidence that she did not agree to the Landlord retaining any portion of their security deposit.

Pursuant to my Interim Decision of *, I find that the Landlord received the Tenant forwarding address in writing on *.

The Landlord failed to apply for arbitration, within 15 days of the receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlords also extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes he is entitled to monetary compensation from the Tenant, he must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenant the sum of **\$600.00**, comprised of double the security deposit and pet damage deposit. I also award the Tenant return of one half of the rent paid for October 2016 as the Landlord

Conclusion

The Tenant is are given a formal Monetary Order in the amount of \$ and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: March 17, 2017

Residential Tenancy Branch