

Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u> MNSD, OLC, <u>MNDC</u>

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 pert of the pet damage deposit or security deposit and an order that the landlord complies with the *Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing, each gave affirmed testimony, and each provided evidentiary material in advance of the hearing which they agree has been exchanged. The tenant also called one witness who gave affirmed testimony. The parties were explained the procedure and order of testimony, and were given the opportunity to question each other and the witness.

All evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the tenant advised that the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement was the only box to check on the Tenant's Application for Dispute Resolution that made sense to the tenant's claim, and I determined that the tenant's application includes a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. Although that box is not checked on the Tenant's Application for Dispute Resolution, it is set out in the Details portion. Considering the evidence provided for this hearing by the landlord I am satisfied that the landlord is aware of the nature of the application. Therefore, I amend the application to include a claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Also, the parties agree that there have been previous hearings, the latest of which may or may not deal with the security deposit. Neither party has yet received a copy of the resulting Decision. Therefore, I decline to make any orders or findings with respect to the security deposit 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation provided in Section 51 of the *Residential Tenancy Act*?

Background and Evidence

The tenant testified that this month-to-month tenancy began on May 15, 2016 and ended on July 31, 2016. Rent in the amount of \$2,300.00 per month was payable on the 1st day of each month and the tenant paid a pro-rated amount for the first partial month of the tenancy. There are no rental arrears, and at the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,250.00 which is still held in trust by the landlord. No pet damage deposit was collected. The rental unit is a single family dwelling, but also has a suite on the side which is also tenanted. A copy of the tenancy agreement has been provided.

The tenant further testified that the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. It is dated June 29, 2016 and contains an effective date of vacancy of August 31, 2017. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or parent or child of that individual's spouse)." The tenant moved out in accordance with the notice.

On October 29, 2016 the tenant received a phone call from a woman stating that she had mail for a previous tenant and asked the tenant to confirm her previous address, which she did. The woman told the tenant that her son had incorrectly opened mail belonging to the tenant and the woman had a cheque for the tenant in the amount of \$630.00 from Winnipeg. The tenant went to the rental unit with her daughter and spoke to the woman, who gave the tenant her mail. The tenant asked if the woman was related to the landlord, who replied that she was not and that she heard from the landlord after placing an advertisement looking for a rental unit and had moved into the rental unit in August. The woman also told the tenant that the landlord had told her to leave any mail from the previous tenant in the mailbox and the landlord would pick it up.

The tenant has also provided copies of numerous text messages which appear to be exchanged between the tenant and the woman in the rental unit, as well as text messages exchanged between the tenant and the landlord. In one message, the

landlord states: "Just so you know that you are just a tenant and that's my property you are renting. And Nobody can stop me from entering my property. I mean Nobody."

The tenant further testified that the landlord's evidentiary material includes a letter from his son saying that he was living in the rental unit from September 1, 2016 to March 26, 2017, but all evidence from 2 previous hearings provided by the landlord's son is not the address of the rental unit, but of the landlord.

The tenant's witness testified that she is the adult daughter of the tenant and lived in the rental unit with her mother.

Sometime near the end of October, 2016 the witness accompanied her mother to their previous rental unit after a woman had contacted her mother stating she had mail. The witness was present when her mother asked the woman a number of questions, including when she moved in, and the woman responded that she moved in in August, 2016 but didn't specify the day. She also responded that she was renting from the landlord named in this application and was not related to him. The woman also advised that her ex-husband lived in the basement, and that the landlord had told her to leave mail for previous tenants in the mailbox.

The landlord testified that his son moved back home in March because of his wife's health and the landlord has re-rented the rental unit for \$2,200.00 per month effective April 1, 2017.

The landlord also testified that it's a "he said, she said" issue. The woman who called the tenant could have been one of the landlord's son's friends. The landlord's son has provided a letter for this hearing confirming that he is a UBC student and lived in the rental unit from August 1, 2016 to March 26, 2017 when he moved back home to his parent's home due to his mother's health. The landlord's son is not married and has no children.

The landlord's son also gets mail from UBC and volunteer associations that he's involved with which all still go to the landlord's address. The landlord also told his son that if any mail from any previous tenants is received, to give it to the landlord and the landlord would forward it or return to sender.

Any woman that the tenant may have spoken to would know the landlord's son but the landlord doesn't know about his friends. No couple was living there or an ex-husband in the basement.

The landlord also testified that the tenant has a history of messing with landlords and refers to letters provided by previous landlords stating that the tenant has not been

truthful in applications to rent, including the rental application for this rental unit. After moving out of the rental unit, the tenant also gave false information to the new landlord. The tenant also goes by several different names, and although not relevant to this hearing, the tenant cannot be trusted.

<u>Analysis</u>

The onus is on the tenant to establish that the claim exists, and that it exists as a result of the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement. The *Act* specifies:

- **51** (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
 - (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In this case, the tenant applies for compensation for the landlord's failure to use the rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property. I also note that the landlord issued it 6 weeks after the tenancy began.

I have reviewed the evidentiary material of the parties, including the letters the landlord has provided and applications for tenancy. The landlord questions the tenant's real name and testified that she goes by several names, but I don't' find that to be relevant to these proceedings even though the tenancy agreement names the tenant differently than the Tenant's Application for Dispute Resolution. One contains a last name as a hyphenated last name and the other does not, but they are similar. However, I also note that the Addendum to the tenancy agreement requires a full month's rent as a "damage deposit" which is contrary to the law. However a landlord may also collect half a month's rent for a pet damage deposit, but the Addendum specifies that no pets are permitted.

I have also reviewed the list of text messages provided by the tenant wherein the landlord states that nobody can stop him from entering onto the rental property, which is also contrary to the *Residential Tenancy Act*.

The landlord, at least partially, relies on the letters of other alleged landlords to illustrate that the tenant is not an honest person and should not be believed. However, the landlord has clearly not complied with the *Act* by specifying more money as a security deposit than permitted and by telling the tenant he will enter the rental unit whenever he likes.

I also consider the text messages exchanged between the tenant and the woman the tenant and her daughter visited to collect mail. They are dated October 29, 2016, and I am satisfied that the woman was living in the rental unit at that time.

The landlord did not explain why he would not have known prior to the beginning of the tenancy that his son would need to occupy the rental unit just weeks after the tenancy began. I find that the landlord had an alternative reason for issuing the notice to end the tenancy, and actually rented to another person in August, 2016. Therefore, I find that the tenant has established the claim for double the monthly rent, or \$4,600.00.

Conclusion

For the reasons set out above, 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 \$4,600.00.

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

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: April 27, 2017

Residential Tenancy Branch