



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on November 15, 2016 for:

1. An Order to retain the security deposit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on April 13, 2017 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. During the hearing the Tenant withdrew its claim for return of October 2016 rent.

Issue(s) to be Decided

Did either the Tenant or Landlord have their right to the security deposit extinguished?

Is the Landlord entitled to recovery of the filing fee?

Is the Tenant entitled to compensation for hydro costs?

Is the Tenant entitled to return of both a security and pet deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on May 1, 2016. Rent of \$1,495.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. No pet deposit was collected. The rent for October 2016 was paid in full.

In a hearing that took place on September 15, 2017 the Parties agreed to mutually end the tenancy on December 31, 2017. The Parties also agreed that the Tenant could end the tenancy earlier if the Tenant “gives one full rental month of notice pursuant to Section 45(1) of the Act” and that the Tenant “is still responsible to pay rent until the agreed end of tenancy date or up to the point that proper notice given to the Landlord to end the tenancy takes effect.”

The Landlord states that on September 23, 2017 the Tenant verbally him of the move out of the unit around mid-October 2016. The Landlord state that the Tenant was asked to put the notice in writing. On September 27, 2016 the Tenant sent the Landlord an email notifying the Landlord that the tenancy would be ended for October 31, 2016 and that the unit would be empty by October 17, 2016. In this email the Tenant asks for reimbursement of any rent for this month should the Landlord rent the unit. The Landlord states that on October 15, 2016 the Tenant called and said she would be out of the unit on October 16, 2017. The Landlord states that he then offered the Tenant two opportunities to inspect the unit for October 17, 2016. The Landlord states that the Tenant refused both offers. The Landlord states that he attended the unit at both of the offered times and the Tenant did not appear at either. The Landlord states that on that same date he posted a notice of final inspection for October 18, 2017.

The Landlord states that he attended the unit on October 18, 2017 but the Tenant did not attend. The Landlord states that as the Tenant had not returned the keys the Landlord changed the locks. The Landlord states that he completed the inspection and report and started cleaning. The Landlord states that he discovered that the Tenant was still entering the unit and had thrown his curtain and rods outside so he again

changed the locks on October 26, 2017. The Landlord claims retention of the Tenant's security deposit.

The Tenant states that she initially contacted the Landlord by phone to inform him that she had found another place and was going to move out for the end of October 2016. The Tenant states that the Landlord provided his email address and never said anything about putting the notice to end tenancy in writing. The Tenant states that her intention was to end the tenancy earlier than October 31, 2016 if the Landlord found a tenant but that she heard nothing from the Landlord about prospective tenants. The Tenant states that when she informed the Landlord on October 16, 2016 that she was mostly moved out, no offers for a move-out inspection were made. The Tenant states that the Landlord may have made an offer for an inspection on October 18, 2016 but the Landlord was irate and hollering at the time so she could not understand him. The Tenant states that she would not have agreed to an inspection before the end of the month as the Tenant had paid the rent, had possession of the unit until the end of the month and that she wanted the extra time to finish cleaning without rushing. The Tenant states that she went back multiple times to the unit, that the locks were not changed and that she had no problems entering the unit with her key to the end of the month. The Tenant states that had the Landlord told her that someone wanted to see the unit the Tenant could have cleaned sooner.

The Tenant states that the unit experienced a major leak on October 16, 2016 and that the Landlord was immediately informed. The Tenant states that she agreed to allow free access for the Landlord's contractors to make repairs as she was no longer physically there. The Tenant states that she asked the Landlord by text and by phone messages to arrange a move-out inspection and that the Landlord never called her to arrange one. The Tenant states that no notice of final inspection was ever found on the door of the unit. The Tenant withdraws her claim for return of October 2016 rent.

The Landlord states that the Tenant provided its forwarding address and the Landlord wrote is on the move-out report. The Landlord was unable to state when the Tenant

provided the forwarding address. The Tenant states that she provided her forwarding address in one of the emails containing her notice to end tenancy.

The Tenant states that it was agreed at the onset of the tenancy that she was responsible for the entire hydro bill if the basement suite did not have a tenant. The Tenant states that although there were no tenants in the basement suite the Landlord and contractors were working in the suite and using the hydro for the months of July and August 2016. The Tenant states that in addition to repairs, the rugs were removed, the unit was painted and city inspectors attended on several occasions as the basement suite was determined by the city to be illegal. The Tenant states that the Landlord verbally agreed over the phone that he would reimburse the Tenant with 40% of the hydro costs for those months. The Tenant states that she sent the Landlord a copy of the bill. The Tenant claims \$51.10 and provides a copy of the bill.

The Landlord states that a repair person was present for one day and during that time only cut a few boards. The Landlord states that they were otherwise only in the unit to remove a stove and sink. The Landlord states that they were in the basement suite for repairs at most three days. The Landlord states that he was also in the basement suite a number of times but used either just lights or no electricity at all. The Landlord states that he recalls the Tenant asking to be reimbursed but that the Landlord did not agree to any reimbursement.

The Tenant states that instated of paying the Landlord \$150.00 for a pet deposit, the Landlord agreed that her costs to clean to clean the unit at move in would be accepted in lieu of the deposit. The Tenant claims return of this amount as the pet deposit plus the security deposit. The Landlord agrees that the Tenant did not have to pay the pet deposit in lieu of the cleaning.

Analysis

Section 35 of the Act provides that on or before the day the tenant ceases to occupy the rental unit, or on another mutually agreed day the landlord and tenant together must inspect the condition of the rental unit and the landlord must offer the tenant at least 2 opportunities for the inspection. Section 36 of the Act provides that the right of a tenant to the return of a security deposit is extinguished if the landlord has given two opportunities for inspection and the tenant has not participated on either occasion. Section 36(2) provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer 2 opportunities for an inspection.

Based on the undisputed evidence that the Tenant continued to have access to the unit until the end of October 2016 and given the lack of supporting evidence of any lock change by the Landlord during that time, I find on a balance of probabilities that the Landlord did not change the locks as stated. Given the lack of documentary evidence such as phone logs, or copies of notice for final inspection, considering the Tenant's plausible evidence that no such offers were made, and given that the Tenant had possession of the unit until the end of October 2016 I find on a balance of probabilities that the Landlord made no offers for an inspection to the Tenant in the middle of October 2016 or at the end of October 2016. Given the lack of move-out inspection offers I find that the Landlord's right to claim against the security deposit and/or pet deposit was extinguished at the end of the tenancy. I therefore dismiss the Landlord's claim to retain the security deposit. As this was the only claim in the application, I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit or make an application for dispute resolution claiming against the security or pet deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security

deposit. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

Based on the undisputed evidence that the Parties agreed that the Tenant could provide her labour in lieu of a \$150.00 pet deposit, I find that the Tenant paid this amount for a pet deposit. Even if the Tenant did not provide her notice to end tenancy outside of an email, the Landlord gives evidence of changing the locks in the middle of October 2016. By virtue of that evidence I find that despite the lack of notice otherwise, the Landlord accepted the email notice as effective to end the tenancy. As the Tenant paid rent to the end of October 2016 and as there is no evidence that the Landlord obtained another tenant for prior to the end of October 2016 I find that the tenancy ended on October 31, 2016. Based on the Tenant's undisputed evidence that the forwarding address was provided prior to the end of the tenancy and as the Landlord's right to claim against the security or pet deposit was extinguished I find that the Landlord was required to return the security deposit to the Tenant within 15 days of the end of the tenancy. As the Landlord has not returned the combined security and pet deposit of \$900.00 I find that the Landlord must now return **\$1,800.00** to the Tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given that there is no written evidence of an agreement by the Landlord to pay any portion of hydro costs, I find on a balance of probabilities that the Tenant has not substantiated that the Landlord agreed to pay the Tenant 40% of the hydro usage for July and August 21016. Given the undisputed evidence that the Tenant was only required to pay full hydro costs if the basement unit had no tenant, I take this to include any use or occupation by the Landlord. Given the undisputed evidence that the basement suite was occupied for some period of time by contractors, the Landlord and inspectors, I find that the Tenant did incur a larger cost than otherwise would have been incurred. As a result I find that the Tenant is entitled to reasonable and nominal compensation of **\$25.00** for the Landlord's use of the basement suite.

As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,925.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,925.00**. If necessary, this order may be filed in the Small Claims 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: May 19, 2017

Residential Tenancy Branch