



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

On November 3, 2016, the Tenant submitted an Application for Dispute Resolution for the Landlord to return of all or part of the pet damage deposit or security deposit, and for a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The Landlord and Tenant appeared at the hearing. The hearing process was explained and the parties were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants Application indicates the Tenant is seeking compensation in the amount of \$1,450.00. At the hearing the Tenant clarified her claim and advised that she has concrete amounts rather than the estimates she provided within the monetary order worksheet she submitted.

Since the Tenant did not amend her Application with the Residential Tenancy Branch and serve the Landlord with a copy of the amended Application or monetary amount, the Tenant's claim is limited to the amount listed within the Application that was served on the Landlord.

Issues to be Decided

- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to compensation for damage or loss under the Act, regulation, or tenancy agreement?

Background and Evidence

The parties testified that the tenancy commenced March 1, 2016, as a one year fixed term tenancy to continue until March 1, 2017. The Tenants paid the Landlord a security deposit of \$900.00. The Tenant provided a copy of the tenancy agreement.

The Tenant signed the tenancy agreement with a co-tenant. The Tenants paid the Landlord a security deposit of \$900.00.

The Tenant is seeking compensation for the following items:

Cleaning Costs	\$117.00
Moving costs	\$370.00
Security Deposit	\$450.00

The Tenant testified that second hand smoke coming from the Landlords who live in the lower unit was affecting her enjoyment of the property and ultimately forced her to move out of the rental unit. The Tenant testified that the Landlords smoke four packs of cigarettes per day and the second hand smoke travelled into the upper rental unit through the vents and other openings. The Tenant testified that after she moved out she had to have her bedding, linen and couch cleaned due to the smoke.

The Tenant testified that she had to have her possessions cleaned by a laundry at a cost of \$117.00.

In response, the Landlord testified that she is not in agreement to pay the cost for cleaning the Tenant's property.

The Tenant testified that because of the second hand smoke and the failure of the Landlords to deal with the problem, the Landlord is responsible to pay her moving costs of \$370.00. The Tenant testified that she sent the Landlord letters and texts asking the Landlord to take steps to eliminate the second hand smoke from entering the rental unit. The Tenant testified that the Landlords took no steps to correct the problem.

The Tenant testified that she had an air quality person from the city come out to check the unit and that he considered that there was significant smoke.

In response, the Landlord testified that she never told the Tenant that the property was non-smoking. She testified that after the Tenant notified them about the issue with smoke, they took steps to deal with the problem. The Landlord testified that they purchased an air purifier for the rental unit, and started smoking out on the patio, or in the garage. The Landlord testified that they took these steps immediately after the Tenant notified them of the issue.

The Landlord testified that she never received a letter from Interior Health regarding second hand smoke.

The Landlord is not in agreement to pay the Tenants moving costs and the Landlord testified that the co-Tenant also smokes in the rental unit and on the patio. The Landlord submitted a letter that states that co Tenant smokes and the children are often sitting with him while he is smoking. The Landlord submitted that perhaps some of the smell on clothing is because of that.

The Landlord submitted that when a person chooses to move out they are responsible to pay their own moving costs. The Landlord submitted that the Tenant moved out because of a breakdown in the relationship with her co –Tenant.

The Landlord testified that the co -Tenant did not move out and he remained in the unit and complied with the fixed term tenancy agreement. The Landlord testified that new tenancy agreement was not entered into with the co Tenant.

The Tenant responded by stating there was no letter from Interior Health, and that she did not have an air quality test conducted due to the cost.

The Tenant testified that the Landlords failed to return half of the security deposit to her after she moved out of the rental unit.

Analysis

Residential Tenancy Policy Guideline # 30 Fixed Term Tenancies is intended to help the parties to an application understand issues that are likely to be relevant. The guideline provides:

during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may not use the one month notice provisions of the Legislation to end the tenancy prior to the end of the fixed term. Any one month notice will take effect not sooner than the end of the fixed term.

The Guideline also states that during the fixed term a Tenant may end the tenancy if the Landlord has breached a material term of the tenancy agreement. The Tenant must give proper notice under the Residential Tenancy Act. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

The tenancy agreement provided by the Tenant does not contain a term regarding smoking. The Tenant submitted that the Landlord excessive cigarette smoking was not made clear to her before she moved in and became a health hazard. There is no letter from Interior Health regarding second hand smoke or an air quality test provided by the Tenant in support of her testimony.

I do not find that smoking is a material term of the tenancy agreement. Even if it was a material term, the Tenant's letters to the Landlord does not meet the requirements to end a tenancy for a breach of a material term of an agreement.

I accept the Landlord's testimony that the co Tenant also smokes in or on the property. I find that the Tenant had a responsibility to determine whether there will be smoking on the property before she entered into the tenancy agreement.

I find that the Landlord's took immediate steps to eliminate or reduce second hand smoke from affecting the Tenant.

The Tenant chose to move out of the rental unit and the co-Tenant remained and honored the fixed term tenancy agreement. The co Tenant continues to live in the unit.

I find that there is insufficient evidence from the Tenant to support her position that the Landlord is responsible to pay her cleaning and moving costs. The Tenants claims for these items are dismissed.

With respect to the security deposit, I find that the Landlord is not obligated to return half of the security deposit to the Tenant. The Landlord accepted the security deposit from the Tenants at the start of the tenancy and the Landlord is entitled to hold the deposit

until the tenancy ends. The tenancy has not ended. The Tenant may request half of the deposit from the co-Tenant; however, I have no authority under the Act to make a decision on a Tenant vs. Tenant dispute.

The Tenant's request for the Landlord to return half of the security deposit is dismissed.

Conclusion

The Tenant's application for compensation for cleaning and moving costs is not successful and is dismissed.

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 08, 2017

Residential Tenancy Branch