



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. A monetary Order for compensation for the cost of emergency repairs - Section 33;
3. An Order for the return of the security deposit - Section 38;
4. An Order for the Landlord's compliance - Section 62; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy originally started in 2014 and was followed by a series of fixed term tenancy agreements. The last tenancy agreement started on January 1, 2016 for a fixed term to end on December 31, 2016. Rent of \$625.00 was payable on the first day of each month. At the outset of the original tenancy the Landlord collected \$237.50 as a security deposit and this amount was carried over to subsequent tenancy agreements for this unit. The Tenant moved out of the unit on or about November 30, 2016. The Parties mutually conducted a move-in and move-out inspection with completed reports however no copies of those reports were provided to the Tenant.

The Tenant states that in October 2016 the Landlord told the Tenant that the tenancy would have to end as they were planning on renovating the unit. The Tenant states that he was told he had to move and the Tenant thought he had no choice. The Tenant states that no notice to end tenancy was given to the Tenant by the Landlord. The Tenant states that the Landlord should have issued such a notice and paid the Tenant the required compensation. The Tenant states that he did not know his rights at the time and did not call the RTB for information prior to agreeing to enter into a new tenancy at a different location. The Tenant now claims this compensation of the equivalent of one month's rent or \$625.00.

The Landlord states that in October 2016, in advance of the tenancy end date that required the Tenant to move out of the unit at the end of the fixed term, the Tenant was given an offer to move into another building and the Tenant accepted that offer. The Landlord states that the Tenant signed the tenancy agreement for the new unit in early November 2016. The Landlord states that in October 2016 there were no plans to start renovations to the unit and that the Tenant was not told that he had to move out because of renovations. The Landlord states that the Tenant moved into a better unit and was given a half month's rent free. The Landlord states that no renovations have been done to the unit to date. The Tenant agrees that he was given choices of where to move.

The Tenant states that the claim for the costs in relation to a cable outlet is in relation to the unit that the Tenant subsequently moved into.

The Tenant states that the Landlord made deductions to the security deposit for carpet and oven cleaning costs without the Tenant's agreement. The Tenant states that the carpet was stained during the tenancy by a leak that was not caused by the Tenant. The Tenant states that the Landlord only returned \$147.50 from the security deposit. The Tenant claims the return of the security deposit and does not waive return of double the deposit. The Landlord states that the Tenant agreed to the deduction for carpet cleaning in the terms of the tenancy agreement.

Analysis

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for 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. I do not find the Tenant's unsupported oral evidence that he was given no choice about moving out of the unit to be sufficient evidence of coercion on the part of the Landlord. As the Landlord could not end the tenancy until after the fixed term and as the Landlord did not give the Tenant a formal notice to end tenancy for landlord's use, I find that the Tenant has not substantiated an entitlement to the compensation claimed.

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 deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Tenant moved into another building operated by the Landlord and as the Parties entered into a written tenancy agreement for this new residence I find that the Landlord received the Tenant's forwarding address in writing by virtue of the written tenancy agreement with the Landlord.

Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if, inter alia, the term is inconsistent with this Act or the regulations. Section 37(2) of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. As the tenancy agreement terms in relation to advance cleaning costs acts to remove the Tenant's right to leave the unit reasonably clean, purports to remove the right of the Tenant to agree in writing at the end of the tenancy to deductions for damages and operates to reflect the Landlord's standard and not an objective standard of reasonable cleanliness I find that this term is in conflict with the Act and is therefore not enforceable.

Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, 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. I note that this section does not apply where a landlord's right to claim against the security deposit has been extinguished due to the non-provision of condition inspection reports. As there is no written authorization from the Tenant agreeing for a retention of any part of the security deposit, as the Landlord did not make any application to claim against the security deposit and as the Landlord did not return the full

security deposit to the Tenant I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the amount of **\$475.00**. I deduct the **\$147.50** that has already been returned to the Tenant for a final amount owed by the Landlord of **\$327.50**.

As the claim in relation to repair costs is in relation to a different rental unit I dismiss this claim with leave to reapply in relation to that other unit.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$327.50**. 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: July 25, 2017

Residential Tenancy Branch