



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, O, FF; MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38;
- other remedies, identified as recovery of a non-sufficient funds charge from the tenant;
- authorization to recover the filing fee for her application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 82 minutes in order to allow both parties to fully present their submissions. The tenant and "agent CP" spoke during most of the hearing time.

Agent CP attended the hearing as a witness on behalf of the tenant and as an agent to assist the tenant with her submissions. Agent CP provided witness testimony at the

outset of the hearing, as I notified both parties that witnesses were not permitted to hear testimony of the parties and provide their own testimony after. Both parties had equal opportunities to question the witness. Agent CP then acted as the tenant's agent after the conclusion of her witness testimony and I did not consider any witness testimony from her after.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord testified that she served the tenant with five pages of printed text messages by leaving a copy in the tenant's mailbox on June 23, 2017. The tenant testified that she did not receive this evidence, but she received the remainder of the landlord's written evidence package. As advised to both parties during the hearing, I find that the tenant was deemed served as per sections 88 and 90 of the *Act*, with the landlord's text messages on June 26, 2017, three days after it was left in the tenant's mailbox. I notified both parties that I would consider the evidence at the hearing and in my decision but the landlord did not reference the text messages during her testimony.

Pursuant to section 64(3)(c) of the *Act*, I amend both parties' applications to add the landlord's first legal name, instead of just her English nickname which both parties included in their applications. Both parties consented to this amendment.

At the outset of the hearing, the landlord confirmed that her application for "other remedies" identified as recovery of a \$40.00 non-sufficient funds charge from the tenant, was not required as she did not pay any fees to her bank for this. This portion of the landlord's application is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is either party entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement arising out of this tenancy?

Is the landlord entitled to retain the tenant's security deposit?

Is the tenant entitled to a monetary award for the return of double the amount of her security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and agent CP, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2016 and ended on January 8, 2017. The written tenancy agreement indicates that the tenancy is for a fixed term of three months from December 1, 2016 to February 28, 2017. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties, who both agreed on its contents during the hearing, as I had not received a copy from the landlord prior to this hearing. The rental unit is the lower portion of the same house in which the landlord occupies the upper floor.

Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy. Both parties agreed that the tenant provided a written forwarding address to the landlord on a paper towel on January 8, 2017. The landlord agreed that she did not have written permission from the tenant to retain any amount from the security deposit. The landlord confirmed that her application to retain the deposit was filed on January 19, 2017.

The landlord seeks a monetary order of \$2,400.00 for a loss of January and February 2017 rent and to retain the tenant's security deposit of \$600.00 to offset the above amount. The landlord also seeks to recover the \$100.00 filing fee paid for her application. The landlord seeks the loss of rent based on the fixed term tenancy agreement, stating that the tenant vacated early without notice and she owes rent until the end of the fixed term. The tenant claimed that she had a verbal agreement with the landlord's father, who was the landlord's agent, to vacate early and have her security deposit and one month's rent returned and not have to pay for January or February 2017 rent. The tenant provided a witness statement from her friend, "NW" in support of her claim. The landlord disputed the verbal agreement, claiming it did not occur.

The tenant seeks a return of double the value of her security deposit totaling \$1,200.00. The tenant seeks to recover the \$100.00 filing fee paid for her application. She also

seeks daycare expenses of \$118.00, moving expenses of \$292.50 and an additional month's rent compensation of \$1,200.00 because she said that she had to live in a rental unit that had a significant "slope" in the flooring, which was so uneven that it made her and her daughter have a "seasick" feeling, caused health concerns and affected the tenant's employment. The tenant provided a witness statement from "HT" about measuring the "tilt in the flooring" of the rental unit. She claimed that she did not notice this slope until she moved in because she was only there for five to ten minutes to inspect before moving in. She said that the rental unit was an "illegal suite" in a garage as per the City, and she did not know the rules for the City when she moved there. She said that the place was dangerous for her and her daughter to live so she had to leave. She said that she also slipped and fell on ice because the landlord failed to shovel the walkway and her parking spot at the rental unit. She provided photographs of the areas.

Agent CP testified that she is the tenant's office manager, who sits beside her at work every day, claiming that she saw the tenant was tired, sick, crying, and her work suffered "speed and error-wise" while living at the rental unit until she moved to a new place.

Analysis

Landlord's Application

Fixed Term Tenancy

Section 45(3) of the Act states that if the landlord has breached a material term of the tenancy agreement and failed to correct it within a reasonable period after the tenant gives written notice of the failure, the tenant may end a tenancy effective on a date after the date the landlord receives the notice. Although the tenant did not specifically refer to this concept, she referenced leaving the rental unit because she was unable to live at the rental unit because of the serious "slope" in the rental unit, which made her and her daughter sick, as well as the "illegal suite" which posed health and safety concerns.

I find that, and the tenant testified that, she did not provide the landlord with a proper written notice to end the tenancy for breach of a material term, in accordance with the requirements of sections 45(4) and 52 of the *Act*. The tenant did not provide the landlord with any reasonable period of time to correct the issues she was claiming, as per section 45(3) of the *Act*.

Therefore, I find that the tenant was not permitted to end the fixed term tenancy prior to February 28, 2017.

Loss of Rent

Section 26 of the *Act* requires the tenant to pay rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I find that the landlord failed to fully mitigate her losses in her efforts to re-rent the unit to prospective tenants. The landlord did not provide a copy of any advertisements for re-rental, even though she had them in her possession. The landlord did not receive any calls from potential tenants, nor did she conduct any showings of the unit. The landlord did not decrease the advertised rent price from the \$1,200.00 that the tenant had paid during her tenancy, despite the fact that the landlord received no inquiries for the unit. She still has not re-rented the unit to date. The landlord left town from March 6 to April 4, 2017, and did not make any efforts to secure a rental prior to leaving.

Accordingly, for the reasons stated above, I award the landlord eight days of pro-rated rent of \$309.68 ($\$1,200.00/31 \text{ days in January} \times 8 \text{ days} = \309.68 rounded up) from January 1 to 8, 2017, because the tenant lived at the rental unit during that time and owes rent while living there.

I dismiss the remainder of the landlord's application for a rental loss for January and February 2017, on the basis that I find that the landlord failed to fully mitigate her losses.

Tenant's Application

Damages and Losses

I found above that the tenant was not permitted to end the fixed term tenancy prior to February 28, 2017. On this basis, I dismiss the tenant's application for daycare expenses of \$118.00 and moving expenses of \$292.50 without leave to reapply,

because she moved of her own volition, incurred these expenses voluntarily, and did not provide a notice of a breach of a material term.

I also dismiss the tenant's claim for an additional month's rent of \$1,200.00 without leave to reapply. The tenant failed to provide a breakdown to justify why she was claiming one month's rent as compensation rather than any other amount. The tenant provided no work or medical documentation to show that she is entitled to this money, due to health issues or a loss of work wages. The tenant said that she fell on ice because of the landlord, but did not demonstrate that she suffered any losses, since she did not visit the doctor or receive any treatment or medications. She said that she and her daughter were "seasick" because of the tilted flooring but she did not provide medical evidence to support this. She said that her work suffered but she did not provide paystubs or other work documentation to show any time taken off work, any loss of wages, or any negative performance reviews that resulted in a demotion or job loss.

Agent CP's testimony was mainly based on hearsay and what the tenant told her about how she was feeling and why, to which I place limited weight. Agent CP did not know what to testify about during the hearing and relied on my questions to her when testifying, after I informed her that it was not my role to present the tenant's case. Agent CP did not explain what the tenant's losses were when her work deteriorated, in terms of a loss of wages or a demotion. She did not provide documentation to support her claims, despite the fact that she is the office manager and would have access to those records.

I do not accept the tenant's submission that she had an agreement with the landlord's father to recover her security deposit, avoid paying rent for January and February 2017, and receive an additional one month's rent as moving expenses. First, the landlord's father did not appear at this hearing to testify, but the landlord testified that there was no such agreement with her or her father.

Second, the tenant who described NW as her "close friend," provided a witness statement indicating that he heard the verbal agreement between the tenant and the landlord's father, did not testify at this hearing to verify his statement. He is not an independent third party, as he is a close friend of the tenant. In his written statement and as per the tenant's testimony, the landlord allegedly deterred NW from testifying at the hearing by filing a complaint against him at his workplace, yet NW still produced a witness statement that was commissioned by a lawyer at his workplace. The landlord

denied deterring NW from testifying, saying she only advised his workplace of his actions in this tenancy. Therefore, I give limited weight to NW's statement.

Third, I give limited weight to the text messages produced by the tenant between her and the landlord's father, as they were written in a different language other than English. There is no indication as to who translated these messages, when the translations were done, what language is being translated to English, and whether the person is a certified translator or someone who knows the language fluently. Agent CP indicated it was someone in the tenant's workplace who translated the documents but did not provide any other details or have the person testify at the hearing to confirm.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on January 8, 2017 and the tenant provided the landlord with a written forwarding address on the same date. The tenant did not give the landlord written permission to retain any amount from her deposit. The landlord did not return the full deposit to the tenant. The landlord filed an application for dispute resolution to claim against the deposit within 15 days of the tenancy ending and receiving the written forwarding address from the tenant. The landlord's application was filed on January 19, 2017. Although the landlord's right to claim against the deposit for damages was extinguished for failure to complete move-in and move-out condition inspection reports as per sections 24 and 36 of the *Act*, the landlord only claimed for a loss of rent from the deposit, not damages.

The landlord continues to hold the tenant's security deposit of \$600.00. Over the period of this tenancy, no interest is payable. As per section 38(6) of the *Act*, the tenant is not entitled to the return of double the value of her deposit, only the regular amount of \$600.00, minus the portion to be deducted for the landlord's monetary award.

I order the landlord to retain \$309.68 from the tenant's security deposit of \$600.00, in full satisfaction of the monetary award for the eight days of January 2017 rent. I order the landlord to return the remainder of the deposit of \$290.32 to the tenant.

As both parties were mainly unsuccessful in their applications, I find that they are not entitled to recover their \$100.00 application filing fees from the other party and they must bear their own costs.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$290.32 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of both parties' applications are dismissed without leave to reapply.

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 06, 2017

Residential Tenancy Branch