



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord in the amount of \$3,750.00 representing return of double her security deposit and compensation for breach of quiet enjoyment.

The hearing was conducted by teleconference on December 7, 2017. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me. The Tenant also had three witnesses available to testify on her behalf. As the Landlord did not call into the hearing, and the Tenant submitted substantially documentary evidence in support of her claim, I found it unnecessary to hear from her witnesses.

The Tenant testified that she served the Landlord with the Notice of Hearing and her Application on July 13, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Tenant further testified that she was informed by the post office that the package was initially signed for by a person in the Landlord's home, and was then returned by the Landlord to the post office. Following this, several notices were sent to the Landlord regarding retrieval of the registered mail package, however the Landlord refused to pick it up.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of July 18, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant received return of double her security deposit?

Background and Evidence

The Tenant testified that the tenancy began March 1, 2015. Monthly rent was payable in the amount of \$750.00. The Tenant paid a security deposit in the amount of \$375.00.

The Tenant testified that she moved out September 30, 2016.

The Tenant stated that the Landlord did not perform a move in or move out condition inspection, despite the Tenant's requests that such inspections occur. The Tenant stated that she kept her rental unit clean and tidy at all times. She further indicated that one of the witnesses who called into the hearing, R.S., was prepared to give evidence as to the cleanliness of the rental unit when the tenancy ended. As the Landlord did not have an application before me, I did not hear from R.S.

The Tenant testified that she provided her forwarding address to the Landlord by registered mail on June 18, 2017. A copy of the letter was provided in evidence; as well the tracking number is also included on the unpublished cover page of this my Decision.

The Tenant also sought compensation in the amount of \$3,000.00 for breach of quiet enjoyment. She stated that the basis of her claim was that the Landlord repeatedly breached her privacy and harassed her during the tenancy.

The Tenant stated that she suffers from post-traumatic stress disorder and as a result lives on her own as she has trouble being around people. She provided medical evidence confirming this diagnosis. The Tenant stated that on more than one occasion the Landlord entered the rental unit without the Tenant's consent. She stated that the Landlord even entered the rental unit while the Tenant was in the bathtub on more than one occasions. These incidents were clearly upsetting to the Tenant as she sounded as if she were near tears during her testimony.

The Tenant stated that she called the police on the Landlord at one point as the Landlord denied her entry to the rental unit. She stated that she was carrying groceries to the unit, and when she went to get her second load, the Landlord locked her out. The Tenant stated that she spoke to the police at this time and they advised her that it would be in her best interests to end the tenancy due to the Landlord's behaviour. The Tenant stated that she liked the rental unit but could no longer tolerate the Landlord's behaviour.

The Tenant further stated that the Landlord admitted to peeking into the Tenant's rental unit, one evening when the Tenant informed her she had seen someone outside her window.

The Tenant stated that the Landlord also entered the rental unit whenever the Tenant had company, which felt like an intimidation tactic. The Tenant informed the Landlord she was not to enter the rental unit without the Tenant's consent or proper notice, to which the Landlord responded that it was her house and she could do whatever she wanted. Introduced in evidence was a letter to the Landlord from the Tenant wherein the Tenant informed her of section 29 of the *Residential Tenancy Act* as it relates to a Landlord's right to enter a rental unit.

The Tenant stated that although she gave proper notice to end her tenancy (a copy of her letter was provided in evidence) she was forced to move out quickly as after she gave notice the Landlord's behaviour escalated to the point the Tenant felt in physical danger. She stated that due to her hurried move,

Analysis

The Tenant applies for return of double her security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's undisputed evidence that she did not agree to the Landlord retaining any portion of their security deposit.

I find that the Landlord received the Tenants forwarding address in writing on June 23, 2017. The Landlord failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes she is entitled to monetary compensation from the Tenant, she must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **\$750.00** , comprised of double the security deposit (2 x \$375.00).

The Tenant also seeks the sum of \$3,000.00 for breach of quiet enjoyment.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.”

After careful consideration of the undisputed testimony and evidence I find the Landlord breached the Tenant’s right to quiet enjoyment as protected by section 28.

I find that the Land breached the Tenant’s right to privacy in the rental unit. While the rental unit is a basement suite in the Landlord’s home, the Tenant is entitled to exclusive possession of that space; the evidence before me indicates the Tenant was unreasonably disturbed by the Landlord, who failed to respect the Tenant’s right to exclusive possession of the rental unit.

I accept the Tenant’s evidence that the Landlord repeatedly entered the rental unit without her knowledge or consent and without proper notice, and that on more than one occasion entered the Tenant’s bathroom while the Tenant was disrobed. Understandably, this caused the Tenant considerable upset and I accept her testimony that it exacerbated her pre-existing post-traumatic stress disorder.

The Tenant testified that the Landlord admitted to peeking in her windows, and otherwise breaching her right to privacy. The impact of this behaviour was apparent during the hearing as the Tenant was audibly upset as she spoke of this incident.

The evidence indicates the Tenant provided the Landlord with information regarding section 29 of the *Act*, and prohibitions on the Landlord's right to enter the rental unit. It appears this information did not dissuade the Landlord from repeatedly violating the Tenant's rights in this regard.

The Tenant also submitted that the Landlord entered the rental unit and removed her personal items, disposed of two of her rugs, disconnected the fireplace, and then removed a space heater.

The Tenant also testified that the Landlord denied her access to the rental unit on several occasions by locking the deadbolt, to which the Tenant does not have a key. On one of these occasions the Tenant was forced to call the police.

The Tenant further submitted that the Landlord denied her access to her parking spot, by parking an unlicensed car in the Tenant's spot.

The Tenant requests the sum of \$3,000.00, which represents four months of her 18 month tenancy, or 22% of the amount she paid for rent. I find, based on the Tenant's undisputed evidence as to the Landlord's egregious behaviour that this is fair compensation for the severity and frequency of the Landlord's interference with the Tenant's right to quiet enjoyment during the tenancy and I therefore award her the **\$3,000.00** claimed.

Conclusion

The Tenant is granted the sum of **\$3,750.00** calculated as follows:

return of double the security deposit paid	\$750.00
compensation for breach of quiet enjoyment	\$3,000.00
total	\$3,750.00.

The Tenant is given a formal Monetary Order in the amount of **\$3,750.00**. The Tenant must serve a copy of this Order on the Landlord as soon as possible. Should the

Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: December 07, 2017

Residential Tenancy Branch