



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR LAT LRE MNDCT OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46 and the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47; a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and authorization to change the locks to the rental unit pursuant to section 70 and an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended this hearing. The landlord's agent confirmed receipt of the tenant's application. The tenant testified that she had vacated the rental unit on December 1, 2017 and therefore the tenant withdrew her application for: cancellation of the landlord's two Notices to End Tenancy; authorization to change locks and restrict the landlord's access to the rental unit. The tenant continued with her application for a monetary order and to order that the landlord comply with the Act.

Preliminary Issues

Issue 1: The landlord submitted a monetary order worksheet and attached receipts for this hearing with an amount sought by the landlord for cleaning and repairs at the end of this tenancy. However, the landlord has not made an application for a monetary order against the tenant. Therefore, I can only consider the materials as rebuttal evidence to the tenant's application. I cannot consider the landlord's request at this hearing for a monetary order without a formal application before me.

Issue 2: The tenant submitted evidence for this hearing (including photographs, letters and text correspondence) 2 days prior to this hearing. She testified that she didn't believe it was necessary to serve the landlord as he knew the condition of the residence as provided in the photographs and was party to the correspondence. However, without proper service to the other party within the appropriate timeline and in accordance with the service sections (88 and 90) of the Act, I cannot consider these documentary submissions. The landlord has not been provided with these documents and therefore is not in a position to respond to them meaningfully.

Issue(s) to be Decided

Is the tenant entitled to a monetary order in the amount of \$4550.00?

Is the tenant entitled to an order that the landlord comply with the Act?

Background and Evidence

This tenancy began on December 1, 2015 as a month to month tenancy. A copy of the written tenancy agreement was provided as evidence for this hearing. The rental amount of \$700.00 was payable on the first of each month. The landlord confirmed that she continues to hold the tenant's \$350.00 security deposit paid by the tenant at the outset of this tenancy. The landlord confirmed that she did not make an application to retain the tenant's security deposit.

The tenant's monetary claim included the return of her \$350.00 security deposit; \$1200.00 for the landlord's lack of provision of "necessary services"; \$1400.00 to represent \$200.00 per month in rent reductions for "being evicted without cause"; \$600.00 in moving expenses; and \$1000.00 in loss of use or quiet enjoyment ("personal inconvenience") by the tenant during the tenancy.

The tenant testified that she was inconvenienced with reduced use of her rental space as she had been without a useable bathroom since May 2015. The landlord adamantly denied this allegation and suggested that a person could not continue to reside in a residence for 8 months when there is no useable bathroom. The tenant submitted a copy of a letter dated July 2016 that advises the landlord there may be an issue with the pipe in her bathroom. She submits that the landlord never resolved the issue.

The tenant testified that the landlord had accessed her personal disability information and had fraudulently accessed the disability funds. She did not submit any documentary evidence or other evidence beyond her testimony with respect to this point. The tenant testified that the landlord also gave her telephone number to a variety of real estate agents to contact her directly regarding showing the rental property.

The tenant testified that the landlord had failed to respond to requests for repairs in the rental unit and, more pressingly for the tenant the landlord would enter the unit without sufficient notice. The landlord's representative, on behalf of the landlord denied that the landlord entered without proper notice in compliance with the Act. The tenant did not submit any documentary evidence or other evidence beyond her testimony regarding this claim. The tenant testified that the poor condition of the rental unit including the lack of a useable bathroom as well as the invasion of her privacy create the basis for her claim of \$1000.00 in loss of use and/or quiet enjoyment.

The tenant testified that the landlord she paid approximately \$600.00 in moving expenses. She submitted that she would not have had to move and incur those expenses but for the landlord's "illegal eviction". The tenant did not provide any receipts or invoices from her move.

The tenant testified that she is entitled to \$200.00 per month for a total of \$1400.00 to compensate her for the landlord's "illegal eviction". The tenant confirmed at the start of this hearing and during the course of her testimony that she did not pursue cancellation of the landlord's notices to end tenancy but vacated the rental unit on December 1, 2017. The parties agreed that the tenant provided her forwarding address on December 5, 2017 and that the landlord received it the same day.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord was informed of the forwarding address by writing and text correspondence on December 5, 2017. The landlord had 15 days after that date (to December 20, 2017) to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." The tenant testified that she did not agree to allow the landlord to retain any portion of her security deposit. As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of her deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The tenant seeks return of her security deposit. The landlord did not apply to the Residential Tenancy Branch to retain the tenant's deposit by December 20, 2017 and, as of the date of this hearing, had not made an application with respect to damage to the unit and retention of the deposit. Therefore, I find that the tenant is entitled to a monetary order including \$350.00 for the return of the full amount of her security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *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;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

As stated above, I find that the landlord has not applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant testified that she has not waived her right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order including an amount double the

value of her security deposit with any interest calculated on the original amount only. No interest is payable for this period.

With respect to the tenant's monetary claims, section 67 provides the requirements to prove a monetary claim. The section establishes that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears (in this case, the tenant) the burden of proof. The claimant/tenant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I dismiss the tenant's claim for \$200.00 per month (\$1400.00 total) to compensate her for the landlord's "illegal eviction". The tenant vacated the rental unit and did not pursue cancellation of the landlord's notices to end tenancy and therefore there is no determination that the landlord's end to the tenancy was unjustified. Further, the tenant has not submitted sufficient information upon which I can rely in determining that the tenancy was unjustified and what, if any, damages resulted from the end of tenancy.

The tenant claimed that the landlord accessed her personal information and, through fraud, received a portion of her disability. I find that the tenant did not provide sufficient evidence to support that claim: she did not submit any documentary evidence or other evidence beyond her testimony. I find that the tenant has not shown she is entitled to compensation on this basis.

The tenant also claimed that the landlord also gave her telephone number to a variety of real estate agents to contact her directly regarding showing the rental property however I find that the tenant did not submit sufficient documentation to show that this occurred or that the landlord's alleged action resulted in some compensable loss.

The tenant also claimed that the landlord caused personal inconvenience & loss of enjoyment of life and living space (loss of quiet enjoyment and loss of use under the *Act*) for the reasons provided above. The tenant also claimed that the landlord failed to make repairs and keep up the standards of the rental unit however the claims were not supported by sufficient evidence to prove that the tenant incurred a loss and that the landlord was responsible for that loss. I accept the testimony of the landlord that the tenant's bathroom was repaired on notification of the need for repairs by the tenant. As well, I note that the tenant testified that she should be compensated because her bathroom was being repaired and therefore she lost use of space. I find that these submissions do not align with each other. For this reason and as a result of insufficient evidence to prove her claim, I dismiss the tenant's claim for \$1000.00 for a loss of use and loss of quiet enjoyment.

An award of moving expenses as sought by the tenant would require proof that the landlord breached the *Act*, the Regulation or the tenancy agreement in evicting the tenant and requiring her to move out. As the tenant has not provided sufficient evidence with respect to the nature of the end of the tenancy or any action not allowed under the *Act*, I find that the tenant is not entitled to recover moving expenses. As well, I note that the tenant provided insufficient evidence (no receipts, invoices or estimates) to prove any verifiable moving expenses, I dismiss the tenant's claim for \$600.00 in moving expenses.

Conclusion

The tenant withdrew her application to cancel the landlord's Notices to End Tenancy; an order that the landlord's entry into the unit be set to conditions, that the lock on the rental unit be changed.

I dismiss the tenant's monetary applications with respect to loss of use, loss of quiet enjoyment, the landlord's end of the tenancy, an alleged failure of the landlord to provide the tenant with the residential tenancy necessities and moving expenses.

I grant the tenant's request for an Order that the landlord comply with section 38 of the Act and I issue a \$700.00 monetary Order in favour of the tenant in accordance with section 38. The tenant is provided with this Order in the above terms and 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.

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: January 23, 2018

Residential Tenancy Branch