



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, LRE, OLC, PSF, MNDC, MNSD, FF

Introduction

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

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order in relation to a disputed rent increase - Section 43;
3. An Order restricting the Landlord’s right of entry - Section 70;
4. An Order for the Landlord’s compliance - Section 62;
5. An Order for the provision of services and/or facilities - Section 65;
6. A Monetary Order for compensation - Section 67;
7. A Monetary Order for the return of double the security deposit - Section 38;
and
8. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on November 17, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials on November 22, 2017. I also accept the Tenant’s evidence that the Landlord was served with the amendment to the application

in person on January 9, 2018. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

The Tenant confirmed that the tenancy ended and the Tenant moved out of the unit. Given these facts I dismiss the claims to cancel the notice to end tenancy, restricting the Landlord's entry, seeking the Landlord's compliance, and for the provision of services and facilities as these claims are no longer relevant. The Tenant confirms that the Tenant did not pay a rent increase. I therefore dismiss this claim.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed in compensation?

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Relevant Background and Evidence

The Landlord did not provide a written tenancy agreement for signature by the Tenant. The Parties verbally agreed that the tenancy would start on May 15, 2017 with rent of \$1,000.00 payable within the first 5 days of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. No move-in inspection was offered or conducted by the Landlord. After a few months into the tenancy the Landlord wanted to increase the rent by \$200.00 and the Tenant refused. On November 8, 2017 the Landlord served the Tenant with a two month notice to end tenancy for landlord's use (the "Notice"). The Landlord informed the Tenant that the Landlord would be occupying the unit. The Tenant does not believe this to be true and although the Tenant disputed the Notice the Tenant changed her mind and moved out of the unit on December 20, 2017. The Tenant changed her mind as the Landlord turned off the heat and stopped laundry access. The Landlord did not pay the Tenant any compensation for having been given the Notice. The Tenant provided its forwarding address to the Landlord on December 20, 2017. The Landlord has not returned the security deposit and has not made an application to claim against the security deposit.

The Tenant claims compensation for having received the Notice and claims return of the double the security deposit.

The Tenant states that although the tenancy was to start on May 15, 2017 the Tenant could move into the unit on that date as the Landlord still had tenants in the unit. The Tenant states that they were unable to move into the unit for a further 5 days. The Tenant states that they had to cancel their movers and claims the cancellation fee of \$150.00. The Tenant states that they had to stay at another home and claims \$300.00 as the amount paid to stay at that home. The Tenant claims the costs of eating at restaurants for those 5 days in the amount of \$300.00. No receipts or invoices were provided for any of these claims.

The Tenant claims \$500.00 as the cost of moving out of the unit.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the lack of receipts in relation to the late move into the unit I find that the Tenant has not substantiated the amounts claimed for cancelling the movers, a stay in another home and dining at restaurants. However, as it is undisputed that the Landlord failed to provide the unit on the date agreed to I find that the Tenant is entitled to a nominal compensation of **\$200.00**.

Section 51(1) 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. Based on the undisputed evidence that the Landlord gave the Tenant a two month notice to end tenancy for landlord's use and as the Tenant moved out of the unit I find that the Tenant is entitled to the equivalent of a month's rent in the amount of **\$1,000.00**.

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. Based on the undisputed date of the end of the tenancy and the provision of the forwarding address and considering that the Landlord has not made an application to claim against the security deposit and has not returned the security deposit to the Tenant I find that the Landlord must now pay the Tenant **\$1,000.00**.

Although the Landlord turned off the heat and restricted access to facilities, the Tenant had recourse to a remedy for these acts by making an application to compel the Landlord to return the heat and facilities. As the Tenant chose to move out of the unit I find that the Tenant has not substantiated that the Landlord caused the end of the tenancy by stopping the heat or restricting access to facilities and I dismiss the claim for moving costs from the end of the tenancy. As the Tenant's application has met with substantial success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,300.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$2,300.00**. 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: January 29, 2018

Residential Tenancy Branch