



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: DRI, MNSD, MNDC, FF

Introduction

This hearing dealt with an application made by the tenant made on September 01, 2017, for a monetary order for compensation pursuant to a two month notice to end tenancy for landlord's use of property and for the recovery of the filing fee. The tenant also applied to dispute a rent increase.

On October 10, 2017, the tenant amended her application and increased the amount of her monetary claim. The landlord agreed that she was served with a copy of the amended application

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Since the tenancy ended, the tenant's application to dispute a rent increase is moot and accordingly dismissed.

Issue to be Decided

Is the tenant entitled to a monetary order? Is the tenant entitled to the return of double the security deposit and compensation pursuant to a notice to end tenancy for landlord's use of property?

Background and Evidence

The tenancy began on November 01, 2013. The monthly rent was \$1,050.00 and prior to moving in; the tenant had paid a deposit of \$500.00. The tenancy ended on September 01, 2017 pursuant to a notice to end tenancy for landlord's use of property.

The effective date of the notice was October 01, 2017. On August 21, 2017, the tenant served the landlord with a ten day notice to end the tenancy effective September 01, 2017.

The landlord agreed that the tenant had provided the landlord with a forwarding address on August 21, 2017 along with her 10 day notice to end tenancy. . The tenant testified that she moved out on September 01, 2017 and made this application on that same day. The tenant stated that by October 10, 2017, she had not received the security deposit from the landlord and therefore, she amended her application to include a return of double the security deposit.

The tenant testified that effective January 01, 2017; the landlord raised the rent from \$1,000.00 to \$1,050.00. The parties agreed that the landlord gave the tenant a verbal notice and the tenant paid it without objection. The landlord stated in her written submission that the rent was a lot below market rent and that she had not given the tenant a rent increase since the start of tenancy.

The tenant is claiming \$50.00 for each of the last eight months of tenancy totalling \$400.00 towards the increase in rent paid for the period of January 2017 to August 2017. The tenant justified her claim by testifying that the landlord did not provide a formal notice of the rent increase and also raised the rent by 5% instead of 3.7% as was the rent increase permitted by legislation at that time.

The tenant stated that during the last month of tenancy the landlord informed her that she could not use the back yard and therefore the tenant was claiming \$155.00 for loss of use of the yard in the month of August 2017. The landlord denied the allegation that she denied the tenant the use of the yard. The tenant did not have any text messages, emails or a written note from the landlord forbidding her the use of the yard.

The tenant stated that she had a 10 year old basketball hoop in the yard which was moved by the new owner of the house and damaged. The tenant is claiming \$350.00 to replace the equipment. The tenant did not file evidence to support her claim for the value of the basketball hoop. The landlord denied having damaged the basketball hoop and stated that it was moved to remove weeds that were overgrown around the hoop.

Both parties agreed that the tenant was served with a notice to end tenancy for landlord's use of property and that the tenant paid rent up to the last day of tenancy. The tenant is claiming one month's rent in the amount of \$1,050.00 as compensation.

The tenant is claiming the following:

1.	Double Security Deposit	\$1,000.00
2.	One month's rent compensation	\$1,050.00
3.	Rent increase paid for 8 months	\$400.00
4.	Loss of use of yard	\$155.00
5.	Replace basketball hoop	\$350.00
6.	Filing fee	\$100.00
	Total	\$3,055.00

Analysis

1. Double Security Deposit - \$1,000.00

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

The tenancy ended on September 01, 2017 and the tenant made an application for dispute resolution on that same day. Even though the tenant stated that she had not initially filed for the return of the deposit and simply amended her application on October 10, 2017 which is beyond the 15 days after the end of tenancy, I find on a balance of probabilities that a landlord who receives an application for dispute resolution from a tenant may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the deposit.

Therefore I find that the tenant's application was premature, because she had not waited for the legislated 15 day time frame before applying for dispute resolution. Accordingly the tenant is not entitled to the return of double the deposit. The tenant is entitled to the return of the base deposit in the amount of \$500.00.

The landlord has filed photographs to show the condition of the rental unit at the end of tenancy and requested to retain the deposit towards cleaning and repair of the rental unit. I informed the landlord that she is at liberty to make her own application for damages.

2. One month's rent compensation - \$1,050.00

The tenant received the notice to end tenancy for landlord's use of property on July 02, 2017 with an effective date of October 01, 2017. On August 21, 2017, the tenant gave notice to end the tenancy effective September 01, 2017.

Pursuant to s50(1) of the *Residential Tenancy Act*, if a landlord serves a tenant with a section 49 notice (for landlord's use of property), the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. Section 50(3) states that a notice to end tenancy under section 50(1) does not affect the tenant's right to compensation.

Pursuant to section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice under section 49 (*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.

Therefore by providing notice on August 21, 2017, the tenant gave adequate notice to end the tenancy effective September 01, 2017 and is still entitled to compensation in the amount of one month's rent.

The last month of tenancy was August 2017. The tenant had paid rent for the entire month of August. Therefore the tenant is entitled to compensation in the amount of \$1,050.00

3. Rent increase paid for 8 months - \$400.00

At the time the landlord verbally informed the tenant about the increased rent, the tenant agreed to pay the \$50.00 increase per month. The tenant had the option of requesting for a proper notice which would provide her with the three month period before the increase became effective. In addition the tenant had the option of applying for dispute resolution to dispute the increase. The tenant chose neither option available to her and simply agreed to pay the increased rent and apply for dispute resolution after the tenancy ended. For the above reasons, I dismiss the tenant's application for \$400.00.

4. Loss of use of yard - \$155.00

The landlord firmly denied having restricted the tenant's use of the yard. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim.

When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the parties provided contradictory testimony regarding the landlord's alleged restrictions on the use of the yard by the tenant. The tenant did not have sufficient proof to support her testimony and in the absence of messages by text, email or a written note, I find that the tenant has not proven her claim.

5. Replace basketball hoop - \$350.00

By the tenant's own admission, the basketball hoop was at least 10 years old. The landlord denied having damaged the hoop and stated it was moved to clear the area of weeds which were considerably overgrown. Since the hoop was 10 years old and is an outdoors piece of equipment, I find that the tenant has not proven that the alleged damage was caused by the landlord and in any case is not entitled to replace a 10 year old hoop with a new hoop. Accordingly I dismiss the tenant's claim for \$350.00.

6. Filing fee - \$100.00

The tenant has proven a portion of her claim and is entitled to the recovery of the filing fee.

Overall the tenant is entitled to the following:

1.	Double Security Deposit	\$500.00
2.	One month's rent compensation	\$1,050.00
3.	Rent increase paid for 8 months	\$0.00
4.	Loss of use of yard	\$0.00
5.	Replace basketball hoop	\$0.00
6.	Filing fee	\$100.00
	Total	\$1,650.00

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$1650.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In regards to the landlord's claims relating to loss that she may have suffered, I am not able to neither hear nor consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenants' application. The landlord is at liberty to make her own application for any related loss she may have suffered

Conclusion

I grant the tenant a monetary order for **\$1,650.00**.

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: March 23, 2018

Residential Tenancy Branch