



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act"):

The landlord sought:

- a monetary order for loss, damage and money owed under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant sought:

- a return of the filing fee pursuant to section 72 of the *Act*;
- a return of the security deposit pursuant to section 38 of the *Act*; and
- a monetary award pursuant to section 67 of the *Act*.

Both the landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their testimony and to make submissions. The landlord acknowledged receipt of the tenant's applications for dispute resolution and evidentiary packages, while the tenant explained that she had not received the landlord's application or evidentiary package. The landlord said that he sent the package and evidence to the tenant by way of Canada Post Registered Mail but could not recall the exact date and was unable to produce the Registered Mail receipt. I find that both parties were present at the hearing, and that during the hearing, the tenant was made aware of the landlord's application and evidence. Pursuant to section 71 of the *Act*, I find that the tenant was duly served with the landlord's application and evidentiary package.

Issue(s) to be Decided

Is either party entitled to a monetary award?

Is either party entitled to a return of the filing fee?

Should the landlord be directed to return the tenant's security deposit?

Background and Evidence

Testimony was provided to the hearing by both parties that this tenancy began on October 13, 2015, and ended on May 1, 2016. Rent was \$1,395.00 per month, and a security deposit of \$697.50 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord explained that he was seeking a monetary award of \$1,130.12. This amount represented:

\$556.57 for unpaid utilities

\$520.00 for cleaning required in the unit

\$53.55 for the tenant overholding in the rental unit

As part of his evidentiary package, the landlord submitted a monetary order worksheet, along with several photos purporting to show damage to the rental unit. The landlord said that following the tenant's departure from the rental unit, professional cleaners were required on two occasions. In addition to the additional cleaning, the landlord said that the tenant had failed to pay the utilities during the course of the tenancy. On the landlord's monetary order worksheet, the landlord produced figures associated with months for which utilities were due, but the landlord could not accurately recall for which year these utilities were due. The landlord's agent said that she had uploaded the outstanding utility bills; however, a close examination of the evidence at the hearing revealed no such bills.

The landlord has also applied for one day's rent, arguing that the tenant had failed to vacate the rental unit by the prescribed move-out time, saying, she was present "way past 1:00 P.M."

The tenant asked that all aspects of the landlord's application be dismissed. She said that she had thoroughly cleaned the apartment and disputed that any utilities remained outstanding. The tenant denied that any money was owed related to the bills sought by the landlord and said that she was attempting to move out at the same time that new tenants were attempting to move in.

The tenant has applied for a monetary award of \$20,000.00. This figure included a return of her security deposit, along with a lawn mower that went missing during the tenancy. The remainder of the tenant's application concerned loss of enjoyment related to the tenancy and a return of the rent which she paid. The tenant alleged that the landlord "treated us very badly" and argued that a series of disturbances related to construction noise, a dog barking, and parties contributed to her having a very negative experience throughout her tenancy.

During the hearing, the tenant acknowledged that she had not provided her forwarding address to the landlord, but noted that she had told the landlord's agent that they were to email her the security deposit. The tenant said she phoned the landlord's agent but never heard back and did not receive the security deposit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on both parties to prove their entitlement to a claim for a monetary award.

The landlord is seeking a monetary award of \$1,130.12 for unpaid utilities along with various cleaning services that were required in the rental unit following the tenant's departure. Additionally, the landlord sought rent for one day in which the tenant is purported to have overhired in the rental unit. The landlord testified that several utility bills remained outstanding following the conclusion of the tenancy; however, a close examination of the landlord's evidence uploaded to the hearing does not show any copies of these invoices. The landlord was unable to tell exactly for which year the utilities were unpaid and did not produce any evidentiary documentation showing that the amounts requested remained outstanding. Similarly, despite testifying that cleaners visited the rental unit on two occasions, the landlord failed to produce any invoices related to the cleaning which he described as being necessary following the tenant's departure. Without invoices showing the exact amounts, and because the landlord's testimony lacks detail regarding when these invoices were issued or the exact time when the tenant departed the rental unit, I find that the landlord has failed to provide evidence that can establish the actual monetary amount of the loss or damage as is required by

section 67 of the *Act*. For these reasons, I dismiss the landlord's application in its entirety.

The tenant has applied for a monetary award of \$20,000.00. This figure includes a return of the security deposit, loss of a lawn mower, and an award related to the pain, suffering and inconvenience she purported to have experienced during the tenancy. I will begin by analyzing the tenant's application for money related to loss of the lawn mower and the loss of quiet enjoyment, and then turn my attention to the issue of the security deposit.

The tenant explained that the landlord had disposed of her lawn mower during the tenancy and she sought compensation for the landlord's actions. The tenant did not provide any evidence describing the age, characteristics or the value of the mower, nor did she produce any photographic evidence showing which model it may have been. The landlord acknowledged removing the mower from the premises but said that he had assumed it was junk because it had been left exposed to the elements for many months. As was the case with the landlord, I find that the tenant has failed to provide evidence that can verify the actual monetary amount of the loss or damage as is required by section 67 of the *Act*. For these reasons, I dismiss this portion of the tenant's application related to the mower.

The second portion of the tenant's application for a monetary award involves compensation for the disturbances which the tenant explained that she suffered at the hands of the landlord. Section 28 of the *Act*, says that "A tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance." The tenant argued that loud music would be played by the landlord, that a dog would bark, that construction noise was ongoing and that numerous parties caused her and her daughter to lose many nights of sleep and to have an overall very negative living experience. Despite the tenant's descriptions of these incidents, I find that very little detail was provided to the hearing regarding their frequency, length or duration. Furthermore, the tenant did not provide dates on when these incidents are alleged to have occurred or any steps that she attempted to take to address them with the landlord. For these reasons, I dismiss the tenant's application for money related to loss of quiet enjoyment.

The final portion of the tenant's application concerns a return of the security deposit. Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, upon receipt of the tenant's forwarding address in writing. However, Section 39 of the *Act* states, "Despite any other provisions of this *Act*, if a tenant does not give a landlord a forwarding address in writing within one year after

the end of the tenancy, the landlord may keep the security deposit and the right of the tenant to the return of the security deposit is extinguished.”

After considering the testimony of both parties, I find that both the landlord and the tenant have failed to fulfil the provisions of the *Act*. As the tenant did not provide the landlord with her forwarding address in writing, she is not entitled to a doubling of the security deposit under section 38 of the *Act*, but is merely entitled to its return. The landlord is directed to return the tenant’s security deposit.

As the tenant was partially successful in her application, she may pursuant to section 72 of the *Act* recover the \$100.00 filing fee from the landlord.

Conclusion

The landlord is ordered to return the tenant’s security deposit.

The tenant is provided a monetary order of \$100.00 in full satisfaction for a return of the filing fee.

The tenant is provided with a Monetary 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: April 25, 2018

Residential Tenancy Branch