



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FFT

Introduction

On March 7, 2018, The Tenants applied for Dispute Resolution seeking a monetary order for money owed or compensation for damage or loss under the *Act*. On September 5, 2018, the Tenants amended their application to include the return of the security deposit and pet damage deposit.

The matter was scheduled as a teleconference hearing. The Tenant Ms. B.S. appeared at the hearing; however, the Landlords did not.

The Tenant testified that she served the Landlord and the Landlords agent with the Notice of Dispute Resolution Proceeding documents using registered mail on March 14, 2018. The Tenant testified that she sent the registered mail to the address provided during the tenancy by the Landlord. The Tenant provided the registered mail tracking numbers for the mail sent to the Landlord.

The Tenant amended her application on September 5, 2018, to include the return of the security deposit and pet damage deposit. The Tenant testified that she served the amended application to the Landlord and Landlords agent using registered mail on September 5, 2018. The Tenant provided the registered mail tracking numbers for the amendment sent to the Landlord.

I find that the Landlord was served with the Notice of Dispute Resolution Proceeding and amended application in accordance with sections 89 and 90 of the *Act*. The Landlord and his agent are deemed to have received the Notices of Dispute Resolution Proceeding on March 19, 2018, and September 9, 2018, the fifth day after they were mailed.

The Tenant provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to the return of double the security deposit?
- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Tenant testified that the tenancy began on February 16, 2018, on a fixed term basis that could continue thereafter on a month to month basis. Rent in the amount of \$1,200.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$600.00 and a pet damage deposit in the amount of \$600.00.

The Tenant testified that due to issues presented at the start of the tenancy she asked to end the lease and moved out of the rental unit on March 3, 2018.

The Tenant is seeking compensation from the Landlord as follows:

Rent and utilities for February 2018	\$1,275.00
Gas money	\$100.00
Movers	\$150.00
Additional Rent	\$500.00
Security Deposit and Pet Damage Deposit	\$2,400.00

Rent and Utilities for February 2018 \$1,275.00

The Tenant testified that she is seeking to recover the amount of \$1,275.00 that she paid to the Landlord.

The Tenant testified that the rental unit was undergoing construction when they attempted to move into the unit on February 16, 2018. The Tenant testified that they

moved some belongings in; however, they could not live in the unit because they had no use of the bedroom or living room due to the ongoing construction. The Tenant testified that they only had use of the kitchen and bathroom, so they never slept in the unit.

The Tenant testified that she had a conversation with the Landlord about the issue and told the Landlord he is breaching their tenancy agreement. She testified that she told the Landlord to fix the problem or else they would move out and end the tenancy agreement.

The Tenant testified that she withheld \$600.00 from March 2018, rent because she did not have full use of the rental unit. She testified that she met with the Landlord on March 3, 2018, to discuss ending the lease, and at that time she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities from the Landlord.

The Tenant testified that she decided to not dispute the 10 Day Notice and she moved out of the rental unit on March 3, 2018. The Tenant provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 14, 2018.

The Tenant provided 7 photographs showing construction within the rental unit and 18 photographs of the state of repair and condition of the unit prior to move in.

Gas Money \$100.00

The Tenant is seeking \$100.00 in compensation for the use of gas when she moved in and out of the rental unit.

Movers \$150.00

The Tenant testified that she paid her uncle and aunt to assist her to move her possessions out of the rental unit on March 3, 2018. The Tenant is seeking to recover \$150.00. The Tenant provided receipts.

Additional Rent \$500.00

The Tenant testified that because the rental unit was not ready for her to move into, she had to pay an additional \$500.00 to stay at her previous tenancy. She testified that she paid \$500.00 for the period of February 16, 2018, to March 3, 2018. The Tenant is seeking to recover \$500.00 from the Landlord. The Tenant provided a receipt dated February 28, 2018, in the amount of \$500.00.

Security Deposit and Pet Damage Deposit \$2,400.00

The Tenant testified that the Landlord has failed to return the security deposit and pet damage deposit. The Tenant is seeking double the amount of the deposits.

The Tenant testified that she gave her forwarding address in writing to the Landlord in person on March 20, 2018, at a gas station. The Tenant provided a copy of the forwarding address document.

The Tenant testified that there was no written agreement reached that permitted the Landlord to keep the security deposit or pet damage deposit. The Tenant testified that her pet was never at the rental unit.

The Tenant testified that when they attended the unit for a move in inspection, the Landlord's agent Mr. B.R. told the Tenant Mr. T.H. that he did not need to participate in the full inspection and could leave. The Tenant submitted that the condition inspection report that was provided to them was not the correct report because it was in a different Tenant's name. The Tenant provided a copy of an inspection report for the correct rental address but containing a different Tenant's name.

Analysis

Residential Tenancy Branch Policy Guideline #8 Unconscionable and Material Terms provides the following information:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the*
- *deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement², and a dispute arises as a result of this action, the party alleging the breach bears the burden of

proof. A party might not be found in breach of a material term if unaware of the problem.

Section 26 of the Act provides that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Rent and Utilities for February 2018 \$1,275.00

I find that the tenancy did not end because of a breach of a material term of the tenancy on behalf of the Landlord. While I accept the Tenants' evidence that the rental unit was undergoing construction, and not entirely ready, the Tenants did not properly inform the Landlord in writing of the problem and provide a reasonable deadline to correct the problem or the tenancy will end.

I find that the tenancy ended when the Tenants chose to accept the 10 Day Notice and move out of the rental unit. The Tenants did not have a legal right to withhold \$600.00 from March 2018, rent.

Instead of withholding the rent, the Tenants could have applied for dispute resolution seeking a repair order and a reduction in rent for a loss of value in the tenancy.

Since the tenancy ended due the Tenants acceptance of the 10 Day Notice, and since the Tenants did not take the necessary steps to inform the Landlord of breach of a material term of the tenancy, I find that the Landlord is not responsible for the Tenants choice to move out or the Tenants costs. The Tenants' claims for gas costs; moving costs; and additional rent, are dismissed without leave to reapply.

Since I accept the Tenants' evidence that the rental unit was undergoing construction, and not entirely ready, I find that the Tenants are entitled to compensation for a loss of value in the tenancy. I accept the Tenant's testimony that they had no use of a bedroom and the livingroom. Accordingly, I award the Tenants \$600.00 for the loss of use of some of the rental unit.

Security Deposit and Pet Damage Deposit \$2,400.00

Section 38 (1) of the Act states 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 any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

I find that the Tenants provided their forwarding address to the Landlord on March 20, 2018. There is no evidence before me that the Landlords applied for dispute resolution within 15 days of receiving the Tenants' forwarding address. I find that there was no agreement that the Landlord could retain the security deposit or pet damage deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit and pet damage deposit. I order the Landlord to pay the Tenants the amount of \$2,400.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

The Tenants have established a monetary claim in the amount of \$3,100.00. I grant the Tenants a monetary order in the amount of \$3,100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenants are awarded compensation of \$3,100.00 for a loss of value of the tenancy and for the return of double the security deposit and pet damage deposit.

The Tenants are granted a monetary order in the amount of \$3,100.00.

The Tenants' claims for gas costs; moving costs; and additional rent, are dismissed without leave to reapply.

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: October 24, 2018

Residential Tenancy Branch