



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit, for monetary compensation, and for the recovery of the recovery of the filing fee paid for this application.

The Landlord and the Tenant were present for the duration of the teleconference hearing. At the outset of the hearing, the parties confirmed that they did not have anyone else with them. However, partway through the hearing, it became evident that the Landlord had someone with her who was participating in the hearing.

When asked, the Landlord continued to deny that anyone else was present, but eventually admitted that a family member was present. She provided permission for him to speak on her behalf, so he was affirmed and joined for the remainder of the teleconference hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and copies of the Tenant’s evidence by registered mail. However, she stated that she was missing a page in the evidence and instead had a duplicate page. The missing page was confirmed as a continuation of an email thread between the parties.

The Tenant confirmed that she was served with copies of the Landlord’s evidence. The parties were advised to notify me during the hearing if any documentary evidence brought up during the hearing was not before them. Neither party brought up any concerns with the evidence during the hearing. As such, I find that the Notice of Dispute

Resolution Proceeding package and the evidence of the parties was served in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party. Both parties had to be warned numerous time to not interrupt or speak over the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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 the security deposit?

Should the Tenant be awarded double the security deposit?

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on or around November 1, 2013. Monthly rent was \$1,000.00 and a security deposit of \$500.00 was paid at the outset of the tenancy. The Landlord is still in possession of the full security deposit amount. The tenancy ended on August 14, 2017 and the keys to the rental unit were returned on or around August 28, 2018.

The Tenant applied for the return of double her security deposit in the amount of \$1,000.00. She testified that she did not agree to the Landlord withholding any amount from the deposit at the end of the tenancy.

The Tenant also stated that no move-in inspection report was completed at the start of the tenancy nor at move-out. On August 14, 2017, the Tenant arrived at the rental unit to return the keys and complete the move-out inspection, but the Landlord did not attend. The Tenant stated that she had asked the Landlord many times to complete a

move-out inspection, but it was never done.

The Landlord stated that she sent the Tenant an email regarding meeting earlier in the day on August 14, 2017 to conduct a move-out inspection, but the Tenant claimed she did not receive this email. The email was submitted into evidence. The Landlord stated that she also sent the Tenant reminders about their appointment to meet at the rental unit.

An unsigned Condition Inspection Report was submitted into evidence by the Landlord. She testified that she completed the move-out inspection without the Tenant present, since the Tenant did not show up for their scheduled meeting time.

The Landlord stated that the security deposit was non-refundable due to repairs and cleaning that were needed in the rental unit. She stated that the total cost was more than the amount of the security deposit and she submitted invoices for work completed. The Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord was in agreement that no move-in inspection report was completed and stated that she offered to complete the report with the Tenant, but the Tenant declined. The Landlord confirmed that she did not complete a move-in Condition Inspection Report on her own, as she believed it to be the Tenant's responsibility to request this be done.

The Tenant sent her forwarding address to the Landlord by registered mail on August 30, 2017. The letter with the forwarding address was submitted into evidence. The Landlord was unsure of the date of receipt of the letter, but confirmed that she had received the Tenant's forwarding address.

The Tenant has also claimed \$23,000.00 for loss of quiet enjoyment of the rental unit due to harassment from the Landlord. The Tenant provided testimony that the Landlord denied repairs in the rental unit, instead telling the Tenant to complete the repairs, or leaving it to the building manager to complete. The Tenant also stated that it often took many months for the Landlord to respond regarding a request for repairs or other request regarding the rental unit.

The Tenant also noted that the Landlord accused her young child of yelling and disturbing the neighbours and had said that many of the neighbours had complained.

The Tenant provided further testimony that the Landlord would come to the door of the rental unit late at night and a family member would take photos of the Tenant when she opened the door.

When the Tenant asked to install curtains in the rental unit, the Tenant stated that the Landlord told her that she couldn't, and that if she was unhappy living there, she could move.

Due to the harassment of the Landlord and the accusations against her child, the Tenant stated that she was desperate to move and had to buy a home for a significant amount of money. She stated that she felt unsafe living alone with a young child, due to the harassment of the Landlord. The Tenant submitted many email exchanges between the parties into evidence. In the Tenant's evidentiary material, she described the emails as "obnoxious and intimidating".

The Landlord and the family member of the Landlord responded by stating that the Tenant was lying about the harassment and that the Landlord is always very professional to tenants.

They stated that they responded to the need for repairs or other requests in a timely manner and advised the Tenant that she could use a shower curtain rod to hang curtains if needed, without putting holes in the wall. They also questioned why the Tenant did not move earlier if she felt harassed during the tenancy.

Analysis

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

I refer to Section 38 of the *Act* which states the following:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the letter submitted into evidence from the Tenant showing that her forwarding address was provided on August 30, 2017, which was after the tenancy had ended. Although the Landlord was unsure of the date this letter was received, I find that the deeming provisions of Section 90 of the *Act* state that registered mail is deemed received 5 days after being mailed. As such, I determine that the forwarding address was received by the Landlord on September 4, 2018.

Therefore, the Landlord had 15 days from September 4, 2018 to return the security deposit or file a claim against it. However, I also find that the Landlord was not in compliance with Section 23 of the *Act*, by not completing a walk-through inspection and a Condition Inspection Report at move-in.

By not complying with Section 23, Section 24(2) of the *Act* applies, and the Landlord has extinguished her right to claim against the security deposit. A Landlord has a responsibility to ensure that Condition Inspection Reports are completed at move-in and move-out in accordance with the *Act*. It is not the Tenant's responsibility to ensure the Condition Inspection Report is completed.

A security deposit is held in trust by a landlord for a tenant and a landlord must not keep the deposit unless they have a right to do so under the *Act*. As the Landlord extinguished her right to claim against the deposit, pursuant to Section 24(2) of the *Act*, I find that the security deposit should have been returned within 15 days of receiving the Tenant's forwarding address.

As the Landlord did not meet the obligations for the security deposit under Section 38(1) of the *Act*, I determine that Section 38(6) applies, and the Tenant is entitled to the return of double her security deposit, in the amount of \$1,000.00.

As for the Tenant's claims for compensation for loss of quiet enjoyment due to harassment, I refer to the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* which outlines a four-part test for compensation as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the testimony of both parties, as well as their behaviour during the hearing, that clearly demonstrates that the relationship between the parties had deteriorated to a point that likely caused stress for both parties. However, I do not find sufficient evidence to establish that the Landlord was in breach of the *Act*, or that harassment occurred.

I note that a tenant has a right to quiet enjoyment of the rental unit, as stated in Section 28 of the *Act* as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The party making the claim has the burden of proof, on a balance of probabilities, to establish the claim. However, I do not find sufficient evidence from the Tenant to demonstrate that she lost quiet enjoyment of the rental unit due to harassment by the Landlord.

I also find that the Tenant was unable to establish how the value of her loss and how she determined that the value was \$23,000.00. When asked, the Tenant stated that this was the amount that was decided on, without any further information as to the calculations. As rent was \$1,000.00 per month, I find that the Tenant was claiming that she lost full enjoyment of the rental unit for almost 2 years of her tenancy, but do not find sufficient evidence to support this claim.

Therefore, based on the conflicting testimony of both parties, and given the lack of sufficient evidence to establish otherwise, I cannot determine that the Tenant experienced a loss of quiet enjoyment of the rental unit in an amount of \$23,000.00 due to harassment.

As the Tenant was partially successful in her Application, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

A Monetary Order is granted to the Tenant in the amount outlined below.

Return of security deposit	\$500.00
Amount to double security deposit	\$500.00
Recovery of filing fee	\$100.00
Total owing to Tenant	\$1,100.00

Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$1,100.00** for the return of double the security deposit, and for the recovery of the filing fee paid for this Application for Dispute Resolution. 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: October 18, 2018

Residential Tenancy Branch