



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD RP MNDC FF

Introduction

Both parties and witnesses attended the hearing and gave sworn or affirmed testimony. The tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail. She said she provided her forwarding address in writing with a witness to the landlord on March 13, 2018 and asked for the return of her deposits. The landlord agreed they had received it as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return the security and pet damage deposits pursuant to Section 38;
- b) Compensation for damage and loss; and
- c) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she is entitled to the return of the security and pet damage deposits according to section 38 of the Act and to compensation for other losses?

Background and Evidence

Both parties and witnesses attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit of \$1189.50 and a pet damage deposit of \$1189.50 and she and her boyfriend agreed to rent the unit for \$2379 a month from August 4, 2017 on a fixed term lease expiring August 31, 2018. A colleague of the male tenant lived with them also. The female tenant said she found the male tenant communicating with another woman and he ran off to the bathroom with his tablet so she could not see it. She kicked the

door down in the bathroom and the Police came and removed the male tenant from the home. He called and they made up and he came back and replaced the damaged door and she painted it. The male friend who lived with them told the female tenant that the male tenant remained involved with the other woman. They ran off from the pub when she saw them and he stayed away 4 days, presumably with the other woman.

It was now the beginning of March and the female tenant said she asked the landlord to make a new tenancy agreement with her but they refused until they spoke with the male tenant. Her father called and the landlord told him it was a domestic dispute and they did not want to get involved. On March 8 and 9, the tenant said she felt nervous being alone and her Dad changed the locks. On March 9, 2018, she said she came home and found her garage fob did not work and the male tenant was there. She called the Police to get into her home. The male tenant allowed her father to come in. He said he had ended the tenancy with the landlord and signed a new tenancy agreement with the landlord on March 9, 2018 but it was all her stuff in the house. The Police were called and they verified that the male tenant had a new tenancy agreement dated March 9, 2018. They requested the male tenant to allow the female tenant to retrieve her belongings. When she went in and was putting things together, she became depressed and got scissors and cut her wrist. They kicked the door open and took her downstairs and the Police took her away to protect her from harming herself. She stayed at her father's for a few days and then went back to work. The male tenant wanted her to sign over items in the house that she had given him at some time, like a kayak and the TV. Her items were put in a storage bin, packed by the male tenant, and taken to a storage facility by her father. She is unsure if all her belongings are there.

She said she paid for the security deposit and pet damage deposit from her own bank account. The male tenant said he transferred the money to her bank account so she could pay the deposits, \$2000 on July 19, \$800 on July 31 and \$500 on August 7, 2018. He said the tenant did not have savings and had her credit card maxed out; he helped her with it. He said she worked intermittently and he paid the total rent for 7 months without any contribution from her. She started work again a short time before the domestic problems. Her father said the female tenant was wrongly treated and is speaking the truth. He said she was not working at the time she moved in but paid the deposits from her savings. He agreed she was not working for a period of time but said she paid rent for about 4 months. He disputes the male tenant's allegation of paying rent by himself for 7 months as he said his daughter was working some of the time.

The female landlord said the home was rented based on the male tenant's income as the female tenant had no job at the time. She agreed the draft came from the female

tenant's bank account but said the male tenant had told her he was giving the female tenant the money for it. She confirmed all the rent money came from the male tenant's bank account. When the domestic problems began, they found the male tenant to be totally transparent, telling of the problem and wondering what to do about the rental. The female tenant did not contact them until March 7, 2018. They obtained advice from the Residential Tenancy Branch who advised that one co-tenant could end the tenancy and then the tenancy ended for all co-tenants. The male tenant gave them the appropriate Notice to End Tenancy on March 8, 2018 and they signed a new tenancy agreement with him on March 9, 2018. While they do not want to take sides in the domestic argument, they exercised the right to rent to a tenant with the stable income and history of transparent interactions with them. They refunded the security and pet damage deposits to the male tenant on March 8, 2018 and he paid a new security deposit on March 9, 2018 as part of his new tenancy agreement. The male tenant informed them that he gave the female tenant until March 31, 2018 to remove her property but at this time, she made the unfortunate choice to cut her wrists and the police removed her. They say the statement she could not get her belongings and they kicked her out is false.

Together with other evidence, the tenant provided many invoices of her costs and a copy of the bank draft. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the tenant has claimed damages against the landlord for \$4170 for costs incurred because she had to move out unexpectedly. She claims her tenancy was wrongfully ended so the landlord violated the tenancy agreement and the Act. I find the weight of the evidence is that she and a male partner were co-tenants. I find Residential Policy Guideline 13 clarifies responsibilities of co-tenants as follows:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

I find the weight of the evidence is that there were significant domestic disputes and the male tenant chose to end the tenancy. The landlord chose to enter a new tenancy agreement with the male tenant which did not include the female tenant. I find the tenant gave evidence that she came home and required the male tenant to leave and he asserted that he had a new tenancy agreement and he had given Notice to End their co-tenancy agreement and the landlord had accepted it. I find in a co-tenancy, one tenant may give Notice to End the tenancy and this ends the tenancy for both tenants. I find the female tenant's tenancy ended on March 7, 2018 when the male tenant gave notice. I find the evidence of the landlord and male tenant credible that the Police removed the female tenant on March 8, 2018 to prevent harm to herself and the male tenant gave her until March 31, 2018 to remove her belongings.

I find insufficient evidence that the landlord violated the Act or the tenancy agreement. Therefore, I find them not responsible for the losses claimed by the tenant. If she considers she has a claim for furnishings or other items against her co-tenant, that claim may belong in another forum that handles domestic disputes.

In respect to her claim for the return of her security and pet damage deposits, I find co-tenants have equal rights as well as equal obligations under their tenancy agreement.

The Residential Tenancy Act provides:

Return of security deposit and pet damage deposit

38 (1) 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.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that she paid \$2379 in security and pet damage deposits on August 4, 2018. She notes on the bank draft that it is for the first month's rent plus the deposits. However, I find that if the first month's rent of \$2379 is deducted from the bank draft of \$4527, there was only \$2148 left for the deposits (not \$2379 as claimed). Although the male tenant contended he put this money into her bank account and gave me the amounts verbally, I find his amounts total \$3300 so do not equal the full amount of the first month's rent and deposits. In other words, I find insufficient evidence of how the tenants apportioned the amounts they paid to the landlord. I find the landlord returned all of the deposits to the male tenant within the 15 days allowed by section 38 of the Act so I find the female tenant's monetary claim, if it exists, is against the male tenant, not the landlord, so belongs in another forum. . As

Policy Guideline 13 regarding co-tenants states above “*The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord*”. I interpret this to mean also “the amount owing from the landlord”.

Although the female tenant has had unfortunate circumstances, I find the Act is designed to resolve disputes between landlords and tenants. In this case, I find the landlord did not violate the Act or tenancy agreement so is not responsible for the female tenant’s losses. I find the weight of the evidence is that this dispute is between co-tenants engaged in a domestic dispute and it belongs in another forum. I dismiss the claims of the tenant.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. I find her not entitled to recover her filing fee due to lack of success.

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: September 25, 2018

Residential Tenancy Branch