Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation in the amount of $6,711.00 which includes the return of double the security deposit. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 45 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Was the tenant wrongfully evicted? Is the tenant entitled to compensation? Is the tenant entitled to the return of double the security deposit and to the recovery of the filing fee?

Background and Evidence

The tenancy started on April 01, 2015. The monthly rent was $1,000.00 due on the first of each month. Prior to moving in, the tenant paid a security deposit of $500.00. The rental unit is located on the ground floor of the landlord's home. The landlord lives upstairs.

The landlord testified that on June 21, 2018 she received a letter from the City by law office regarding the rental suite that was located within her single family home. The notice to the landlord was in response to a complaint of the presence of a suite. The landlord was asked to decommission the suite or apply for appropriate permits to legalize the suite. The City required the landlord to have this done by July 22, 2018. The landlord informed the tenant about this notice and the parties communicated by text message. Both parties filed copies of their conversation by text message.

Based on the dates and times of the text messages, , I find that on June 22, 2018, the parties discussed the course of action and the tenant indicated that she intended to move out and had an appointment to view a rental unit at 11am on June 22. Later that day, the tenant sent the landlord a text message saying that she had found a place for July 15, 2018.

The landlord stated that she had up to July 22, 2018 to remove the kitchen but based on a conversation she had with the tenant, the parties agreed that the kitchen could be removed on June 25 and that the City inspection could be scheduled for July 09, 2018.

The parties agreed that the landlord offered the tenant the use of the upstairs kitchen. The landlord also offered the tenant the use of the mobile home that was parked on the property or another home that the landlord owned. The tenant found that all the options were not suitable for her.

The tenant testified that she returned the keys to the landlord on July 28, 2018 and that the landlord allowed her the last month of stay rent free.

On July 28, 2018, the tenant provided the landlord with her forwarding address in writing with a request for the return of the security deposit. The landlord stated that the unit was left in a dirty condition and filed photographs to support her testimony. The landlord stated that the unit also had a strong odour of cat urine and she obtained a quote to have the unit cleaned. The tenant stated that she had cleaned the unit but agreed that she left her freezer behind as she did not have space for it and the landlord had agreed to keep it. The landlord denied having agreed to keep the freezer.

The tenant testified that once the kitchen was removed and the refrigerator was moved to the carport, the unit was unlivable and therefore she dropped her son off to her sister's residence, for a period of two weeks. The tenant agreed that she did not attempt to retrieve her food from the refrigerator even though the landlord allowed her access to it. The tenant is claiming the cost of boarding her son, the cost of gas to drop him off, the cost of meals and the cost of moving.

The tenant testified that she was evicted without proper notice. However the tenant also agreed that she was not served a formal eviction notice. The tenant is also claiming the cost an extension cord that the landlord allegedly borrowed and never returned. The landlord denied having borrowed an extension cord.

The tenant is claiming the following:

1.	Moving costs	$441.00
2.	Cost of gas	$84.02
3.	Childcare	$250.00
4.	Double deposit	$1,000.00
5.	Eviction without sufficient notice	$4,000.00
6.	Cost of meals	$376.00
7.	Extension cord	$60.00
8.	Food in refrigerator	$500.00
9.	Filing fee	$100.00
	Total	**$6,811.02**

Analysis

Based on the testimony of both parties and the documentary evidence, I find that the landlord received a letter dated June 21, 2018 from the City by email on that same day. A copy of the letter was filed into evidence. The landlord stated that she received the email in the afternoon of June 21, 2018 and contacted the tenant the very next morning by text message. The message from the landlord to the tenant is stamped June 22, 2018 at 8:05am and is requesting the tenant to meet with her.

The tenant replied at 9:24am on June 22, 2018, agreeing to meet but added that she had an appointment to view a rental unit at 11:00 am that same morning. Based on this conversation I find on a balance of probabilities that it is more likely than not that the tenant started looking to move prior to June 22, 2018, as she had an appointment to see a rental unit on June 22, 2018 at 11:00am in the morning. Also on a balance of probabilities I find that the tenant was looking to move before she was made aware of the notice from the City by law office.

The text messages continue and indicate that the tenant was very cooperative with the landlord regarding removing the kitchen and setting up an appointment for the City to carry out an inspection.

Based on the above I find that the tenant was not served with an eviction notice and therefore did not have to move out. The tenant chose to move out and probably made a decision to move out prior to her conversation with the landlord regarding the notice from the City. Accordingly I find that the tenant is not entitled to the cost of moving, cost of gas or the cost of childcare.

The tenant was not served with an eviction notice and therefore was not evicted from the rental unit. Accordingly the tenant is not entitled to her claim of $4,000.00 for "eviction without sufficient notice".

The landlord denied having borrowed an extension cord from the tenant and in the absence of any proof of having done so; I dismiss the tenant's claim for $60.00 to replace the cord.

The landlord agreed that the kitchen was removed and the refrigerator was moved to the carport. I find that the tenant agreed to the removal of the kitchen and was offered alternative facilities. The tenant was also allowed access to the refrigerator. Therefore the tenant is not entitled to the cost of meals or the cost of food that was in the refrigerator.

However I find that the tenant did suffer an inconvenience when she lost the use of the kitchen and is therefore entitled to some compensation. The tenant agreed that she had received the last month of rent free stay. The landlord was not obligated to provide rent free stay to the tenant and therefore I find that the tenant was adequately compensated for the inconvenience she endured.

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.

In this case, the landlord agreed that she received the tenant's forwarding address on or about July 28, 2018 but did not return the deposit because the tenant had not cleaned the rental unit. By August 22, 2018, the tenant did not receive her deposit and made this application. Therefore, I find that the landlord failed to repay the deposit or make an application for dispute resolution within 15 days of the receipt of the forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The total security deposit paid was $500.00. Accordingly, the landlord must return $1,000.00 to the tenant. Since the tenant has proven her case she is also entitled to the recovery of the filing fee of $100.00.

Overall the tenant has established a claim for $1,100.00 which consists of $1,000.00 for the return of double the security deposit plus $100.00 for the recovery of the filing fee.

I grant the tenant an order under section 67 of the *Residential Tenancy Act,* for **$1,100.00.** 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 hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to file her own application for damages against the tenant.

Conclusion

I grant the tenant a monetary order in the amount of **$1,100.00.**

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: November 01, 2018

Residential Tenancy Branch