



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 29, 2018 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and the return of double the security deposit.

This matter came before me for a hearing November 15, 2018 at which time the hearing was adjourned. An interim decision was issued November 15, 2018. This decision should be read in conjunction with the interim decision.

The Tenant appeared at the hearing with J.M. to assist. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties and witnesses. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The Tenant sought the following compensation:

1. \$1,300.00 as double the security deposit;
2. \$2,598.00 pursuant to section 51 of the *Residential Tenancy Act* (the “Act”);
3. \$1,291.51 for cleaning on move in;
4. \$156.45 for supplies for cleaning on move in;
5. \$20.00 for garbage cans;
6. \$73.08 for dump fees; and
7. \$63.00 for dump fees.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started August 1, 2013 and was a month-to-month tenancy. Rent was \$1,299.00 per month due on the 31st day of each month. The Tenant paid a \$650.00 security deposit.

The parties agreed the Tenant vacated the rental unit July 10, 2016.

\$1,300.00 as double the security deposit

The Tenant testified that she provided the Landlord her forwarding address in writing and by text. The text was submitted as evidence. The Landlord acknowledged receiving this text July 10, 2016, the same date it was sent. The text states that the Landlord can mail the security deposit to the rental unit as the Tenant has Canada Post “doing a hold mail” that she can pick up. The Landlord acknowledged understanding the text to refer to the rental unit. The Landlord submitted that this is not a forwarding address as it was the rental unit address.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to keep the security deposit.

The parties agreed no move-in or move-out inspections were done. The Landlord confirmed this was not a situation where he attempted to do the inspections but the Tenant did not cooperate.

\$2,598.00 pursuant to section 51 of the Act

A Two Month Notice to End Tenancy for Landlord's Use of Property dated April 30, 2016 (the "Notice") was submitted as evidence and the parties agreed this was served on the Tenant. The grounds for the Notice were that all the conditions for the sale of the rental unit had been satisfied and the purchaser had asked the Landlord, in writing, to give the Notice because the purchaser or a close family member intended in good faith to occupy the rental unit. The parties agreed the tenancy ended because of the Notice.

The Tenant testified that she vacated the rental unit July 10th and found a rental listing for the house on the 20th at a higher rent amount. J.M. questioned why the house would be listed for rent if it had been sold. The Tenant acknowledged that she does not know who posted the listing and that there was no connection between the listing and the Landlord. The Tenant pointed out that the Landlord's name was still on the utility bill for the house in late August.

The Landlord testified that the rental listing was not posted by him. He submitted that it is not his responsibility if the purchaser posted the house for rent. The Landlord agreed his name was still on the utility bill in August but said this does not show he owned the house in August. He testified that his name was on it until this was cleared up by him or his lawyer.

\$1,291.51 for cleaning on move in and \$156.45 for supplies for cleaning

J.M. testified as follows. When the Tenant moved into the rental unit, the prior tenants had left furniture and belongings in the unit and outside. The rental unit was not clean. The rental unit had to be cleaned. The Tenant had to purchase supplies to clean the rental unit. The Tenant cleaned the rental unit for nine hours per day for fourteen days.

The Tenant advised that she is seeking \$10.25 per hour for the cleaning which is minimum wage. She testified that she could not use the fridge or stove. She said the fridge had to be discarded. The Tenant testified that there were human feces left in the rental unit. She said she eventually asked the Landlord to hire someone to assist with the cleaning. The Tenant testified that the Landlord paid her friend \$300.00 to finish the cleaning. The Tenant referred to photos and receipts submitted. The Tenant testified that she obtained the cleaning supplies from the dollar store and only purchased the basics. She said she obtained hardware from the second-hand store.

The Landlord testified that the house was clean when the Tenant moved in. The Landlord testified that the previous tenants did not leave anything in the rental unit. He said he paid \$350.00 to have it cleaned when the Tenant moved in. The Landlord

questioned the dates of the receipts. The Landlord questioned the authenticity of the photos and pointed out that they are not dated.

Witness 1, the Tenant's son, testified as follows at the first hearing. The previous tenants left their belongings in the rental unit and did not clean the rental unit before vacating. The previous tenants also left items outside. They cleaned the rental unit and the Tenant did a significant amount of work in this regard. They rented a steam cleaner to clean the floors. They had to take items to the dump a couple of times.

In response to questions from the Landlord, Witness 1 confirmed he helped clean the rental unit on move in.

Witness 2 testified as follows at the first hearing. She was there at move-in. The previous tenants were just leaving. The previous tenants left furniture behind. There were feces on the walls. There were garbage bags everywhere in the yard. The rental unit was uninhabitable. She is a professional cleaner. The Tenant told her the Landlord would pay her to clean the rental unit. She was paid \$300.00 to clean. It took her 40 or 50 hours to clean the rental unit.

The Landlord had no questions for Witness 2.

Witness 3, the Tenant's daughter, testified as follows at the first hearing. The rental unit was uninhabitable at move-in. The previous tenants had left their belongings behind. The rental unit was a mess. Nothing had been cleaned. The oven could not be used. They disposed of the stove and dishwasher and the Tenant purchased new ones. Garbage bags of human feces were left in the rental unit. Her room flooded which ruined her belongings. The Landlord did not attend to remove the carpet. All her belongings had to be thrown away as a result.

The Landlord asked Witness 3 questions which I do not find relevant.

I understood the Landlord to submit that the witnesses were not reliable or credible and were going to say whatever they were going to say.

The Tenant submitted photos indicating they are from move-in. They are not dated. They show some mess and belongings left behind.

The Tenant submitted numerous photos of the rental unit upon move-out which I do not find relevant.

\$20.00 for garbage cans

The Tenant testified that two of her garbage cans were filled during the cleaning. She said these were taken by the Landlord and never returned.

The Landlord testified that the garbage cans were his and were already at the house.

\$73.08 and \$63.00 for dump fees

The Tenant testified that a pipe burst and flooded her daughter's room. She said the items in the room were destroyed. The Tenant testified that the \$73.08 dump fee was for the items that were destroyed being discarded.

The Tenant submitted an invoice for the \$73.08 dump fee which shows garbage was discarded. It appears a further description was added to the invoice by hand.

J.M. testified about the \$63.00 dump fee. At first, he said this related to dumping a mattress from the start of the tenancy. He then said it related to the mattress destroyed by water at the end of the tenancy.

The Landlord submitted that the dump fees are from the Tenant's own garbage, not from the flood of the daughter's room.

Analysis

\$1,300.00 as double the security deposit

Section 38 of the *Act* sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing.

The parties agreed the Tenant vacated the rental unit July 10, 2016.

I find the Landlord received the Tenant's forwarding address on July 10, 2016. I find text sufficient given the Landlord acknowledged receiving the text. I do not accept the

submission that it was not a forwarding address because it was the rental unit. The Tenant explained in the text that Canada Post was holding mail sent to the rental unit for her so that she could pick it up given she did not have a new address. I find this sufficient and find that the Landlord should have treated this as the Tenant's forwarding address as requested.

Given the above, the relevant date for the purposes of section 38(1) of the *Act* was July 10, 2016. The Landlord had 15 days from July 10th to repay the security deposit or claim against it. The Landlord did neither.

Based on the testimony of the parties, I find that the exceptions set out in section 38(2) to 38(4) of the *Act* did not apply.

I find the Landlord failed to comply with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord must pay the Tenant double the security deposit. No interest is owed as the rate has been 0% since 2009.

I note that it is not relevant whether the Tenant owed the Landlord money at the end of the tenancy. If the Landlord believed the Tenant owed him money, he was required to file for dispute resolution claiming against the security deposit. The Landlord was not permitted to simply keep the security deposit.

I award the Tenant the \$1,300.00 requested.

\$2,598.00 pursuant to section 51 of the Act

Section 51 of the *Act* sets out compensation owed to tenants when landlords fail to follow through with the stated purpose of a notice issued under section 49 of the *Act*.

The legislation at the relevant time stated:

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The grounds for the Notice were that the rental unit had been sold and the purchaser or a close family member intended to occupy it.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove she is entitled to the compensation sought.

I do not find the utility bill to be sufficient evidence that the Landlord did not sell the rental unit or that he continued to own the rental unit in August. There was no further evidence submitted in support of this position. The Landlord testified that he sold the rental unit and did not post the listing.

The Tenant acknowledged that she did not know who posted the listing and that there was no connection between it and the Landlord. In the circumstances, I am not satisfied that it was the Landlord who posted the listing versus the purchaser. If it was the purchaser who posted the listing, this is not the fault of the Landlord and he cannot be held accountable for this. The Tenant would have had to file a claim against the purchaser.

\$1,291.51 for cleaning on move in and \$156.45 for supplies for cleaning

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the other for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the *Act* states:

67 Without limiting the general authority in section 62 (3)...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.

I accept that the rental unit was not clean and had belongings from the previous tenants in it upon move-in. I find this based on the witness testimony. There was nothing about the testimony of the witnesses that caused me to question their reliability or credibility in relation to the rental unit being dirty and having belongings in it. The Landlord did not ask the witnesses any questions that caused me to question their reliability or credibility in this regard.

Based on the testimony of the witnesses, I am satisfied on a balance of probabilities that the rental unit needed to be cleaned upon move-in. The Tenant has met her onus in this regard.

The Landlord should have ensured the rental unit was reasonably clean upon move-in. The Landlord provided no evidence to support his position that the rental unit was clean upon move-in. The Landlord did not do a move-in inspection such that there is a report to refer to in relation to the state of the rental unit upon move-in. I do not accept that the Landlord would have paid for a cleaner if the rental unit was clean upon move-in.

However, I do not accept that the cleaning took the Tenant nine hours a day for fourteen days. This is an excessive amount of time. I would expect strong evidence that the cleaning took this amount of time. The photos submitted by the Tenant showing the

state of the rental unit do not support her position about the time it took to clean. The photos do show that the rental unit was not clean and that items were left behind. However, the Tenant has only submitted photos of a bathroom and the kitchen, not the entire rental unit. In the absence of stronger evidence about the time it took to clean the rental unit, I do not accept the testimony on this point.

Based on what the witnesses described, I accept that it would have been reasonable for the Tenant to clean for eight hours a day for three days at \$10.25 per hour. I award the Tenant \$246.00 for cleaning.

I do not find the receipts submitted to be compelling evidence of the cleaning supplies purchased. Some do not show the date. Others are not clear in relation to what items were purchased. Most of the receipts appear to relate to hardware; however, there is insufficient evidence before me that these specific items needed to be replaced or repaired. Some of the receipts clearly do not relate to move-in given the date.

I accept that some cleaning supplies would have to have been purchased to clean the rental unit. I cannot be satisfied based on the evidence that more than half the amount requested was required. I award the Landlord half the amount requested for cleaning supplies being \$78.00.

\$20.00 for garbage cans

I am not satisfied based on the evidence submitted that the garbage cans were the Tenants. I decline to award the Tenant compensation for these.

\$73.08 and \$63.00 for dump fees

I am not satisfied based on the evidence submitted that the Landlord is at fault for the flood or damage to Witness 3's belongings. I am not satisfied the Landlord breached the Act, regulations or tenancy agreement in this regard. Nor am I satisfied the Tenant minimized the loss resulting from the flood. I decline to award the Tenant compensation for the dump costs in this regard.

Both the Tenant and J.M. gave conflicting and confusing testimony about the \$63.00 dump fee and the basis for this request. I am not satisfied the Tenant has proven she is entitled to compensation for this amount.

In summary, the Tenant is entitled to the following:

1. \$1,300.00 as double the security deposit;
2. \$246.00 for cleaning on move in; and
3. \$78.00 for supplies for cleaning on move in.

In total, the Tenant is entitled to \$1,624.00 compensation and I grant the Tenant a Monetary Order in this amount.

Conclusion

The Tenant is entitled to \$1,624.00 in compensation and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 06, 2019

Residential Tenancy Branch