



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATTON VENTURES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, 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 October 25, 2018 (the “Application”). The Tenant applied for the return of the security deposit, compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing with the Advocate. The Property Manager and Supervisor appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties confirmed the correct rental unit address and this is reflected on the front page of this decision.

The Tenant confirmed he is seeking return of double the security deposit if I find the Landlord failed to comply with the *Residential Tenancy Act* (the “Act”).

The Tenant had submitted evidence prior to the hearing. The Landlord had not. I addressed service of the hearing package and Tenant’s evidence and no issues arose in this regard.

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. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

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

Background and Evidence

The Tenant sought the following compensation:

1. \$500.00 September 15-30 rent;
2. \$500.00 pre-paid October rent;
3. \$1000.00 return of double the security deposit; and
4. \$83.32 for moving van;

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started September 15, 2018 and was a month-to-month tenancy. Rent was \$1,000.00 per month due on the first day of each month. The Tenant paid a \$500.00 security deposit.

The Tenant testified that he vacated the rental unit September 20, 2018 and provided the Landlord notice that he vacated on September 21, 2018. The Property Manager testified that the tenancy ended September 20, 2018.

There was no issue that the Tenant provided the Property Manager with his forwarding address on September 21, 2018.

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 Tenant testified that no move-in inspection was done. The Property Manager testified that the Tenant and someone for the Landlord did an inspection September 15, 2018.

The Tenant testified that no move-out inspection was done. The Property Manager testified that she did an inspection after the Tenant vacated. She advised that the Tenant was not offered two opportunities to do a move-out inspection.

I understood the Property Manager to advise that the Landlord kept the security deposit because the Tenant did not give proper notice to end the tenancy.

The Tenant submitted the letter he provided to the Landlord September 21, 2018. It lists the issues the Tenant had with the rental unit including:

1. Other tenants using illegal drugs. The cannabis smoke is entering the common areas and his unit which is an issue for personal health reasons.
2. Other tenants smoking cigarettes in their units. The smoke is entering the common areas and his unit and is an issue for personal medical reasons and is a fire hazard.
3. Other tenants are leaving entry doors propped open to allow non-tenants into the building which is an issue for security reasons and his personal safety.
4. His insurance rate will increase because of the smoking and tenants leaving doors propped open.

The Tenant testified as follows. He met with the Property Manager prior to signing the tenancy agreement and made it clear to her that he could not live anywhere where people were using drugs. He is a heavy equipment operator and cannot risk being in an environment where people are using drugs. The apartment rules and regulations state that there is to be no drug activity on or around the building. The Property Manager assured him the rental unit building would work for him.

The Tenant further testified as follows. When he was moving into the original rental unit, the neighbours were using cannabis. He made it clear to an agent for the Landlord that he would move if there was drug use in the building. The agent knocked on the door of the neighbours and told them they were not allowed to use drugs and they said they were sorry and would not do it again. The agent got him into a rental unit across the hall instead.

The Tenant further testified as follows. The tenants across the hall from him continued to smoke cannabis. He called the agent for the Landlord and told him. The agent said he would speak to the tenants again. The tenants continued to use cannabis every day after that.

The Tenant testified about other tenants leaving the doors propped open.

The Tenant testified that he is asthmatic and therefore the smoke in the building is a health hazard.

The Tenant testified that the Landlord has breached the *Act, Residential Tenancy Regulation* and/or tenancy agreement by allowing their own rules and city by-laws to be broken.

The Tenant advised that he did not outline the above issues in writing to the Landlord other than in the September 21, 2018 letter. He testified that he brought the issues to the attention of the agent for the Landlord immediately.

The Tenant testified that the loss or damage that resulted from the above issues was \$1,000.00 in rent. He testified that he had to rent a rental van to move as he could not live at the rental unit in the circumstances.

The Tenant submitted that he is entitled to the compensation sought because he was led to believe the rental unit building was safe and drug-free when it was not. The Tenant testified that he had to move out because of the issues noted and had to pay another security deposit.

The Property Manager testified as follows. The no-smoking bylaw is part of the municipal code for common areas. The Landlord rents units as non-smoking but there are long-term tenants who were permitted to smoke previously and still are. The Landlord asks these tenants to smoke outside. She agrees the Tenant made it clear that he could not be around smoke or drug use. She thought the building he was moving into would be fine in this regard. She was not aware of other tenants smoking cannabis because this issue has never been raised before. She was not aware of the issues now raised by the Tenant. The agent for the Landlord who dealt with the Tenant is no longer an employee. The issue with other tenants propping open doors is an ongoing issue and the Landlord checks the doors throughout the day.

The Supervisor pointed out that it would have taken time for the Landlord to deal with the issues raised by the Tenant and they would have appreciated an opportunity to address the issues raised.

The Property Manager agreed the Tenant pre-paid for part of October rent and that the Landlord kept that rent money.

Analysis

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. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

The parties gave conflicting testimony about a move-in inspection. However, I find the Tenant did not extinguish his rights in relation to the security deposit under section 24 of the *Act* regardless of which version I accept.

Further, I find the Tenant did not extinguish his rights in relation to the security deposit under section 36 of the *Act* based on the testimony of the parties.

Based on the testimony of the parties, I find the tenancy ended September 20, 2018 when the Tenant vacated the rental unit. There is no issue that the Landlord received the Tenant's forwarding address in writing on September 21, 2018. Therefore, September 21, 2018 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from September 21, 2018 to repay the security deposit or claim against the security deposit.

There is no issue that the Landlord did not repay the security deposit or claim against it. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

Based on the testimony of the parties, and my findings above, I find that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply in this case.

Given the Landlord failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the

Act. Therefore, the Landlord must return \$1,000.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

I note that the Tenant ending the tenancy in breach of the *Act* is not a basis for the Landlord to simply keep the security deposit. If the Landlord believed the Tenant owed money at the end of the tenancy, or that they were entitled to keep the security deposit, they were required to file an Application for Dispute Resolution with the RTB seeking to keep the security deposit.

Compensation

Section 7(1) of the *Act* states that a party that does not comply with the *Act*, *Regulations* or a tenancy agreement must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Section 67 of the *Act* states that "...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".

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

Rule 6.6 of the Rules of Procedure states that it is the party making the claim that has the onus to prove it.

The Tenant testified that the Landlord breached the *Act, Residential Tenancy Regulation* and/or tenancy agreement by allowing their own rules and city by-laws to be broken.

I have considered whether the Landlord breached section 28 of the *Act* given the issues raised by the Tenant.

All of the issues raised by the Tenant relate to activities of other tenants in the building and not activities of the Landlord. I acknowledge that the Landlord can be held responsible for the actions of other tenants when the Landlord was aware of the problem and failed to take reasonable steps to correct it.

I am not satisfied that the Landlord was aware of the issues raised by the Tenant such that the Landlord had an obligation to address them, other than the issue of tenants propping open doors. The Property Manager denied being aware of the issues. The Tenant acknowledged that he did not provide any written complaints or notice to the Landlord that these issues were occurring. The Tenant testified that he made the agent for the Landlord aware of the issues at the outset. The Tenant submitted no evidence to support this. The Tenant could not provide details about when and how many times he told the agent of the issues. Further, the evidence from the Tenant himself is that the agent did take steps to address the issue of the cannabis smoking by telling the tenants such behaviour was prohibited. There is no evidence before me that the Tenant raised the remaining issues with the agent of the Landlord. I note that the letter dated September 21, 2018 is not sufficient as it was provided to the Landlord after the Tenant moved out.

I note that the Tenant lived at the rental unit for six days. I would not have found six days to be sufficient time to allow the Landlord an opportunity to address the issues raised even if the Tenant had provided written notice of the issues, which he did not.

The Property Manager acknowledged that there is an issue with tenants leaving entry doors open. She testified that the Landlord checks the doors throughout the day. I do not find the door issue to be significant based on the testimony of the parties and evidence submitted. I find the Landlord is aware of it and is taking steps to address it. I find the steps reasonable given the seriousness of the issue which I consider to be on the lower end of the scale.

In the circumstances, I am not satisfied the Landlord has breached the *Act, Regulations* or tenancy agreement as the Landlord cannot be faulted for failing to address issues they were unaware of.

In the absence of a breach, the Tenant is not entitled to compensation for September rent or moving costs.

In relation to October rent, section 45 of the *Act* sets out how a Tenant can end a month-to-month tenancy and states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

...

Section 53 of the *Act* states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

...

Here, section 45(3) of the *Act* does not apply as the Tenant did not give the Landlord written notice of a failure to comply with a material term of the tenancy agreement.

There is no issue that the Landlord received the Tenant's written notice ending the tenancy on September 21, 2018, the day after the Tenant moved out of the rental unit. Pursuant to section 53 of the *Act*, the notice was effective October 31, 2018. The Tenant therefore was liable to pay rent for the rental unit up until October 31, 2018. The Tenant is not entitled to return of the partial rent payment for October.

Given the Tenant was partially successful, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlord must pay the Tenant \$1,100.00. I issue the Tenant a Monetary Order in this amount.

Conclusion

The Landlord must pay the Tenant \$1,100.00 as double the security deposit and reimbursement for the filing fee. I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: March 14, 2019

Residential Tenancy Branch