Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit; compensation payable to tenants where a landlord ends a tenancy for landlord's use of property; and, compensation for loss of laundry facilities. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I explored service of hearing documents and evidence upon the parties. The tenant testified that she sent her hearing package to the landlord via registered mail shortly after filing her Application but that the registered mail was returned as unclaimed. The tenant also stated she sent an email to the landlord to notify her that she had filed a claim. A search of the registered mail tracking number showed that the registered mail was sent on March 4, 2019, and two notice cards were left for the landlord before the package was returned to sender on March 22, 2019. The landlord testified that she was out of the country from March 4 – 11, 2019 but acknowledged she received the registered mail notice card upon returning home but did not go to the postal outlet for several days and by the time she went to the post office the package had already been returned to sender. The landlord stated that she had not paid much attention to the email the tenant sent.

The landlord explained that she was able to obtain a copy of the tenant's Application for Dispute Resolution and Notice of Hearing from the Residential Tenancy Branch but the landlord did not have the tenant's evidence. The landlord explained that on June 4, 2019 she received a "reminder email" from the Residential Tenancy Branch about an upcoming hearing so the landlord telephoned the Branch and the Branch staff person emailed the landlord a copy of the hearing proceeding package.

I was of the view that the landlord had sufficient time to pick up the registered mail had she acted prudently by going to pick up her registered mail within a reasonable amount of time after returning home. Accordingly, I was of the view the landlord's action, or lack thereof, is the reason the landlord was not in receipt of the tenant's registered mail package. As such, I found the tenant met her burden to serve the landlord and I found the landlord to be deemed served pursuant to section 90 of the Act. I also admitted the tenant's evidence and considered it in making this decision.

The landlord submitted that on June 15, 2019 she attempted to serve the tenant with rebuttal evidence but that the tenant was no longer residing at the address provided by the tenant on her application. I confirmed with the tenant that she had moved in March 2019 or April 2019 and that she had not provided the landlord with an updated service address. An applicant bears the burden to provide the respondent with a service address at which they may receive documents from the respondent. Where an applicant's service address changes after the time they served their application I find it reasonable to expect the applicant would provide the respondent with their new service address.

The tenant was of the position that even if the landlord had the tenant's current service address the landlord's evidence would have been served late.

The landlord testified that recent circumstances impacted her ability to gather and serve evidence in a more timely manner. The landlord stated that in February 2019 her niece died and she was out of the country attending the funeral in March 2019. Also, the landlord had two eye surgeries in March 2019 and April 2019 and attended another funeral in May 2019.

The landlord had also requested an adjournment based on the above described circumstances; however, I note that the landlord did not provide any documentary evidence to corroborate the events she described. I declined to grant the landlord's request for adjournment and informed the parties that I was proceeded to hear the case. However, I have admitted the landlord's evidence with a view to fairness and considering the tenant would not have received the landlord's evidence if the tenant updated her service address. Even if evidence is served late, I have discretion under the rules of Procedure to admit the evidence. I found the landlord's evidence was not so onerous that would necessitate several days to read/view it.

Considering both parties were not privy to the evidence submitted by the other party, I informed the parties to orally provide their evidence during the hearing so that the other party may hear and respond to it.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit?
2. Is the tenant entitled to further compensation payable under section 51(1) of the Act for receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property?
3. Is the tenant entitled to compensation for loss of use of the laundry facilities?

Background and Evidence

The tenancy started on July 1, 2017 and the tenant paid a security deposit of $550.00. The tenant was required to pay rent of $1,100.00 on the first day of every month.

On April 25, 2018 the landlord served the tenant with *a 2 Month Notice to End Tenancy for Landlord's use of Property* ("2 Month Notice") with a stated effective date of June 30, 2018. The tenant did not pay rent for May 2018. On May 12, 2018 the tenant gave the landlord a 10 day notice to end the tenancy effective on May 22, 2018. The tenant removed her possessions from the rental unit on May 23, 2018 and according to the tenant the key was returned the key "several days later" but that she left the rental unit unlocked so the landlord may have access. The landlord stated the tenant returned the keys on May 27, 2018 and the tenant had access to the rental unit since she still had the key.

Double security deposit

It was undisputed that the landlord has not refunded any portion of the tenant's security deposit.

The parties provided consistent testimony that the landlord did not perform a move-in inspection report or a move-out inspection report with the tenant.

The parties were in agreement that the tenant provided her forwarding address to the landlord on the 10 day notice the tenant gave the landlord on May 12, 2018.

The tenant testified that she did not authorize the landlord to make deductions from the deposit in writing.

The landlord stated the tenant agreed in a text message that the landlord may retain $200.00 for cleaning. The tenant stated that was during a negotiation of amounts the landlord wanted to deduct but that the tenant was not in agreement with the amounts proposed by the landlord so the tenant did the cleaning herself.

The landlord submitted that the landlord offered to send the tenant $195.00 by e-transfer, after deducting cleaning and carpet cleaning, if the tenant was agreeable but the landlord did not receive a response from the tenant so she did not return any of the security deposit.

Compensation payable for receiving a 2 Month Notice

The tenant did not pay rent for May 2018 as part of the compensation payable for tenants in receipt of a 2 Month Notice but since she ended the tenancy before May 31, 2018 by giving a 10 day notice the tenant seeks the balance of compensation payable to her.

The landlord was of the view the tenant is not entitled to further compensation due to the condition in which she left the rental unit. I informed the landlord that compensation payable to a tenant for receiving a 2 Month Notice is not dependent on the condition the tenant leaves the rental unit and that if the landlord is of the view the tenant left the unit damaged or unclean she may file her own monetary claim against the tenant by filing an Application for Dispute Resolution.

That being said, the landlord was of the position the tenancy did not end until the key was returned on May 27, 2018 since the tenant was still able to access the rental unit until that date. The tenant was of the position that in leaving the rental unit unlocked on May 23, 2018 the landlord was able to access the rental unit and that there was difficulty in meeting up with the landlord to return the key so she eventually met the landlord's husband.

Loss of laundry facilities

The tenant submitted that in late April 2018 and early May 2018, for approximately two to three weeks, the landlord denied her requests to access the shared laundry room. The tenant stated that she was permitted access to the laundry room one day per week,

on Saturdays, but then the landlord started denying the tenant's request for access. The tenant stated the landlord denied her access to the laundry room because she did not pay rent for May 2018.

The tenant stated that without access to the laundry room she had to drive to her mother's home to do laundry there and wait for it to be done before driving home and this was very inconvenient.

The landlord agreed that the tenant was to be provided access to the shared laundry room one day per week but that the day varied and that the tenant would request the day she wanted to use the machines. The landlord acknowledged that she denied the tenant access to the laundry room for approximately 7 days before the tenancy ended. The landlord was of the position she denied access because of the tenant's messages that the landlord's considered threatening and the landlord's son's room is accessed from the laundry room.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the claims before me.

Return of double security deposit

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord may not make a claim against the security deposit and must pay the tenant double the security deposit.

In this case, the tenant provided her forwarding address to the landlord, in writing, on May 12, 2018. The parties provided varying dates as to when the tenancy ended; however, I find that well over 15 days has passed since the tenancy ended, regardless as to which day the tenancy ended in May 2018 and the landlord has not refunded the security deposit or filed an Application for Dispute Resolution to make a claim against it.

The landlord asserted that she had the tenant's written consent to retain $200.00 of the tenant's security deposit and I have reviewed the evidence presented to me with a view to determining whether written consent was given by the tenant. I reviewed emails

exchanged between the parties on June 10, 2018 and several text message changes but I find that none of these communications point to the tenant authorization a deduction of $200.00 from the security deposit. Therefore, I find the landlord did not satisfy me that she had the tenant's written consent to make a $200.00 deduction for cleaning as she claims.

In light of the above, I find the landlord violated section 38(1) with respect to administering the tenant's security deposit and I find the tenant is entitled to return of double the security deposit under section 38(6). Therefore, I grant the tenant's request for $1,100.00.

As the parties were informed during the hearing, the landlord remains at liberty to file a cleaning and/or damage claim against the tenant by filing her own Application for Dispute Resolution within two years of the tenancy ending.

Compensation payable for tenants in receipt of a 2 Month Notice

Where a landlord ends the tenancy for landlord's use of property under section 49 of the Act, the tenant is entitled to end the tenancy early by giving 10 days of written notice to end tenancy to the landlord, as provided under section 50 of the Act. The tenant is also entitled to compensation equivalent to one month of rent, as provided under section 51(1) of the Act. The compensation payable to the tenant under section 51(1) may be accomplished by withholding last month's rent while occupying the rental unit, a payment from the landlord at the end of the tenancy, or a combination of both.

It was undisputed that the landlord issued a 2 Month Notice to the tenant on April 25, 2018 and the tenant gave the landlord a written 10 day notice on May 12, 2018 to be effective May 22, 2018. While the tenant should have paid rent on May 1, 2018 since she had not yet given her notice to end tenancy, I find this violation does not impact the tenant's entitlement to compensation equivalent to one month of rent under section 51(1) of the Act. In other words, if the tenant had paid rent on May 1, 2018 the landlord would have had to issue a refund to the tenant at the end of the tenancy.

The parties provided consistent testimony that the tenant was in possession of the rental unit for much of May 2018 without paying rent and the tenancy ended before the end of May 2018. Accordingly, the tenant received compensation in form of free occupation up to the end of the tenancy and is entitled to compensation equivalent to the days in May 2018 after the tenancy ended.

The parties were in dispute as to the day the tenancy ended. While the tenancy was set to end on May 22, 2018 based on the 10 day notice, the tenant acknowledged she still had her possessions in the unit on May 23, 2018 and returned the key "several days" after that. The landlord was of the position the key was returned May 27, 2018. Section 37 of the Act provides that a tenant is required to return the key(s) to the landlord at the end of the tenancy. It is unclear to me why the tenant did not leave the key in the rental unit or put it under the landlord's door like she did when serving the landlord documents in the past when she left the property for the last time. Therefore, I accept the landlord's position that the tenant remained in possession of the rental unit until the key was returned on May 27, 2018 and I find the tenant entitled to compensation for the days of May 28 through 31, 2018.

I calculate the compensation that remains payable to the tenant under section 51(1) as follows: $1,100.00 x 4/31 days = $141.94. Therefore, I award the tenant $141.94.

Loss of laundry facilities

Both parties provided consistent testimony that the tenant was provided access to the laundry room one day per week as part of her tenancy agreement. The parties provided consistent testimony that the tenant was denied access to the laundry room for a period of time, although that time period was in dispute.

Where a service or facility, such as laundry, is included in rent, the landlord may not terminate or restrict that service or facility unless done in a manner that complies with section 27 of the Act. Section 27(2) requires that the landlord give the tenant at least one full month of advance notice and a rent reduction where a service or facility is going to be terminated by the landlord.

The landlord indicated the reason she denied the tenant access to the laundry was due to threatening messages by the tenant; however, upon review of the text messages submitted to me I see a text message from the landlord that indicates the reason the landlord was denying the tenant access was because the tenant did not pay rent for May 2018. Therefore, I find it more likely than not that the landlord's decision to terminate the service or facility was more retaliatory than fear based.

In light of the above, I find the landlord unlawfully terminated a service or facility and I proceed to consider the tenant's entitlement to compensation for the loss.

In the text messages provided to me, I see a number of messages from the tenant to the landlord seeking access to the laundry room; however, I am only able to see one date, which is May 12, 2018. From the time stamps next to the messages the precede and follow that one, it appears that the tenant was requesting access in the days leading up to May 12, 2018 and I do not see any indication the tenant was provided access for the remainder of her tenancy. Therefore, I find it reasonably likely that the tenant missed at least two laundry days in the last couple of weeks of her tenancy.

I find a reasonable estimation of the devaluation of the tenancy for loss of two laundry days out of four in a month to be approximately $50.00. Therefore, I award the tenant compensation of $50.00 for loss of use of the laundry for approximately two weeks.

Monetary Order

In keeping with my findings above, I provide the tenant with a Monetary Order to serve and enforce upon the landlord, calculated as:

Double security deposit	$1,100.00
Compensation under s. 51(1)	141.94
Loss of laundry facilities	50.00
Monetary Order	$1,291.94

Conclusion

The tenant has been provided a Monetary Order in the sum of $1,291.94 to serve and enforce upon the landlord.

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: June 21, 2019

Residential Tenancy Branch