Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNDCT MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the security deposit for this tenancy pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord BJ (the "landlord") primarily spoke on behalf of the named landlords.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find each party was served with the respective materials in accordance with sections 88 and 89 of the *Act.*

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?
Is the tenant entitled to a return of a security deposit for this tenancy?

Background and Evidence

This tenancy began in December 2013 and ended in April, 2019 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated January 23, 2019. The monthly rent was $884.00 payable on the first of each month.

The tenant submits that they moved out on April 1, 2019. The landlord says that it was April 2, 2019 when the tenant vacated. The parties agree that the tenant paid the full amount of the rent for March, 2019.

The tenant seeks a monetary award from the landlords. The tenant submitted into evidence a Monetary Award Worksheet listing the following items.

Item	Amount
Rent for 1 month	$885.00
Reduction of Rent , $180.00/month for 3 years	$6,480.00
medical libraey	$5,000.00
Tools	$500.00
medical equipments	$20,000.00
Small & Large ladders	$170.00

(reproduced as written)

The tenant subsequently filed an amendment to their application repeating some portions of their initial claim and seeking additional costs.

The tenant claims they paid a security deposit of $400.00 at the start of the tenancy to the previous landlord and submitted an unsigned, typewritten tenancy agreement as evidence.

The landlord disputes that a security deposit was ever paid and submits into evidence the notes provided by the former landlord and the contract of purchase and sale showing no deposit as being held.

The tenant seeks a retroactive reduction in rent and an award for loss of quiet enjoyment, submitting that the landlord has opened their mail, denied use of internet services and have entered the rental unit without authorization.

The tenant also submits that they have lost personal possessions for which they seek their equivalent value.

The landlord confirms that the tenant paid the full rent up to March 30, 2019 and no amount was withheld in accordance with the 2 Month Notice issued. The landlord submits that the tenant is entitled to the equivalent of 1 Month's Rent, $884.00, however they seek to deduct the amount of $58.93 for the period overheld by the tenant. The

landlord also submits that they incurred costs for repairs and cleaning that ought to be charged to the tenant.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant has failed to meet their evidentiary burden to establish much of their claim on a balance of probabilities. I find that the tenant is not a credible witness as they provided testimony which contradicted their own written evidence and were unable to specify the amount sought in their own monetary claim. Where the parties disagree on the evidence I found that the landlords were far more credible, providing consistent, reasonable testimony.

The tenant submits that they paid a security deposit for this tenancy but I find that the unsigned typewritten tenancy agreement submitted into evidence to not be persuasive. The pages containing the reference to the security deposit are clearly in a different typeface compared to the other pages of the agreement submitted. I accept the landlord's evidence that no security deposit was paid for this tenancy. Accordingly, I dismiss the tenant's application seeking a return of a security deposit.

I find that the tenant has failed to establish that they have incurred any loss of quiet enjoyment from the actions of the landlords. I find that the tenant's submissions to simply be subjective complaints with no basis in the documentary evidence. I find their claim that the landlord has opened their mail or entered into the rental unit to not be established on a balance of probabilities.

I find that the tenant has not shown that they have incurred a loss of any personal possessions, much less items which would be cumulatively valued at over $25,000.00. It would be reasonable to expect that if the tenant had any personal possessions of any worth they would have provided an itemized list, receipts or otherwise detailed what items they have lost. The tenant did not do so, instead making a general and spurious

claim for unspecified items and including some stock photographs and blurry photos of the suite. I find the tenant's submission are insufficient to demonstrate that they have incurred any loss due to the landlord.

I accept the parties' evidence that the landlord issued a 2 Month Notice dated January 23, 2019 and that the tenant paid the full rent through March 31, 2019. I accept the landlord's evidence that the tenant did not vacate the rental unit until April 2, 2019. I find the landlord's submission on this point to be more persuasive, consistent and supported in the documentary materials than the tenant's position that they vacated on April 1, 2019.

The parties testified that rent at the end of the tenancy is $884.00. While the tenant claims the amount of $885.00, I find that the equivalent of one month's rent to be $884.00 as agreed upon by the parties.

Section 51 provides that a tenant who receives a 2 Month Notice is entitled to receive from the landlord an amount equivalent to one month's rent payable under the tenancy agreement.

Section 57 of the Act further provides that a landlord may claim compensation from an overholding tenant for any period that the tenant occupies the rental unit after the tenancy ended.

Accordingly, I find that the tenant is entitled to the equivalent of 1 Month's Rent, $884.00 less the per diem amount for the period overheld of $58.93. While the landlord seeks to deduct additional amounts for cleaning and repair costs, I find that it is not open for the landlord to make such deductions without following the legislative steps. If the landlord has incurred damages and loss they are at liberty to apply for a monetary award in accordance with the *Act*.

Therefore, I issue a monetary award in the tenant's favour in the amount of $825.07, the equivalent of 1 Month's Rent less the per diem cost for overholding the rental unit.

Conclusion

I issue a monetary order in the tenant's favour in the amount of $825.07. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The balance of the tenant's application is dismissed without leave to reapply.

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 14, 2019

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Residential Tenancy Branch