



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security and pet deposits, for the return of rent and 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. The tenant represented herself and the landlord was represented by their agent.

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*.

Issue to be Decided

Did the tenant provide the landlord with her forwarding address in writing? Did the landlord apply to retain the deposits? Is the tenant entitled to the return of double the deposits? Is the tenant entitled to the return of rent and to the recovery of the filing fee?

Background and Evidence

The background facts are generally undisputed. The tenancy started in June 2017 for a fixed term of 3 years with an end date of May 31, 2020. The monthly rent at the end of tenancy was \$2,601.00, due on the first of each month. At the start of the tenancy, the tenant paid a security deposit of \$1,180.00 and two pet deposits of a total of \$1,680.00. The landlord agreed that he was holding deposits in the total amount of \$2,860.00.

A copy of the tenancy agreement was filed into evidence. The agreement contains different rents for each of the three years of the fixed term. The agreement also contains a liquidated damages clause.

The increased rental amounts were predetermined at the time the tenancy agreement was entered into and would come into effect at the start of the second and third years of tenancy. The landlord increased the rent by 5% each year. The tenant signed in agreement of the amount of the rent for each of the three years of tenancy.

On November 26, 2019, the tenant served the landlord with a notice to end the tenancy effective December 31, 2019, which is prior to the end date of the fixed term of May 31, 2020. The landlord agreed that he received the tenant's forwarding address on November 26, 2019.

A move out inspection was conducted in the presence of the tenant on December 30, 2019. No discrepancies were identified. The landlord filled out the inspection report with information regarding the loss of income and liquidated damages that the tenant was responsible for, by ending the tenancy prior to the end date of the fixed term. The tenant signed the statement of accounts but stated that she changed her mind and cancelled her signature.

The landlord stated that by the tenant signing the move out inspection report, he understood that the tenant agreed to pay the amount stated on the report which involved the retention of the deposits in satisfaction of a portion of the landlord's claim. The landlord stated that he did not hear back from the tenant until he received the notice of this hearing.

The landlord stated that despite his efforts to re rent the unit, the unit remained vacant and a new tenant was found for July 01, 2020. The landlord stated that by ending the fixed term tenancy prior to the end date of the fixed term, the tenant caused him to suffer a loss of income.

The tenant stated that since she did not receive the deposits within 15 days of the end of tenancy and that she did not agree to allow the landlord to retain the deposits she is claiming the return of double the deposits.

The tenant also stated that the rent increased every year by a percentage that was not in keeping with legislation and therefore she believes that she over paid rent through the term of the tenancy. The tenant is claiming the amount of rent that she believes she overpaid.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit and pet 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 tenant gave the landlord her forwarding address on November 26, 2019 and moved out on December 30, 2019. I find that the landlord failed to repay the deposits or make an application for dispute resolution within 15 days of the end of tenancy and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposits.

The landlord currently holds \$1,180.00 for a security deposit plus \$1,680.00 for a pet deposit. Accordingly, the landlord must return \$5,720.00 to the tenant.

The tenant has applied for the return of rent that she believes she overpaid. The landlord increased the rent by a percentage that was not in keeping with legislation. However, the tenant agreed that she signed the tenancy agreement in acknowledgement of the amount of rent she would be paying for each of the years, in advance of the yearly rate being set by legislation. At the start of the tenancy in 2017, the landlord would have no way of knowing what the legislated yearly increase would be for 2018 or 2019. The rent was set in advance by the landlord for the entire 3-year term of the tenancy and agreed to by the tenant.

The tenant continued to pay rent as per the tenancy agreement and only made this claim after she moved out of the rental unit.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to object to the rent increase in a timely fashion, and based on her acceptance of the rent increase in advance and payment of the same through the tenancy, pursuant to the doctrine of laches, I find that this aspect of the tenant's application must hereby be dismissed.

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 of \$5,820.00. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. 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 he 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 his own application for damages against the tenant.

Conclusion

I grant the tenant a monetary order in the amount of **\$5,820.00.**

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: June 30, 2020

Residential Tenancy Branch