



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing accompanied by her boyfriend for support. The landlord also attended accompanied by her daughter to translate. The tenant and the landlord each gave affirmed testimony, and the landlord's translator was affirmed to well and truly interpret the proceedings as required from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of her skill and ability. The landlord speaks English, however has some difficulty and the services of a translator were not required for the duration of the hearing.

The parties were given the opportunity to question each other and to give submissions. No issues with respect to exchanging evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for return of the security deposit and recovery of money paid by the tenant for repair of a washing machine?

Background and Evidence

The tenant testified that this fixed-term tenancy began on March 1, 2014 and reverted to a month-to-month tenancy after February 28, 2015 which ultimately ended on July 19, 2020 by mutual agreement. Rent in the amount of \$1,000.00 was originally payable on the 1st day of each month, which was raised from time-to-time during the tenancy up to \$1,344.00, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,000.00 which has not been returned to the tenant. The rental unit is a laneway house, and the landlord also resides on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that in March, 2015 the landlord increased the rent to \$1,100.00 without giving the tenant a Notice of Rent Increase. Rental increases continued to \$1,125.00 in March, 2016; to \$1,150.00 in 2017; to \$1,225.00 in 2018; to \$1,325.00 in 2019; and to \$1,344.00 commencing May, 2020 all without providing a Notice of Rent increase, but based only on text messages.

The tenant has provided a copy of a Mutual Agreement to End Tenancy dated June 30, 2020 and effective on July 19, 2020 signed only by the tenant, however the copy provided by the landlord shows signatures of both the tenant and the landlord.

When the tenant told the landlord that she was moving out, the landlord said that the tenant would have to pay for August rent unless the landlord found another tenant, in which case the landlord would refund the August rent. In order to prevent paying rent for 2 rental units, the tenant agreed in writing that the landlord could use the security deposit. A copy of that agreement has been provided as evidence for this hearing. It is dated June 30, 2020 and states that the tenant will be vacating by or around July 15, 2020, and that the tenant voluntarily is giving away the security deposit. It also states: "I voluntary giving away my rental deposit of \$1,100.00 + \$100.00 (water). If the owner could rent the unit out right after I am moving out, owner would willing to give me back that July 15/20 – July 31/2020 (rent)," and is signed by the landlord and by the tenant. No prospective renters viewed the rental unit during the balance of the tenancy.

The tenant has not provided the landlord with a forwarding address in writing except in the Application for Dispute Resolution made by the tenant for this hearing. The tenant did not give the security deposit to the landlord voluntarily, but had to do that. The landlord knew by June 24, 2020 that the tenant was moving out, and asked the tenant on June 28, 2020 if the rental unit could be available for viewing on July 5, 2020, but no one attended to view it.

The tenant's application also states that the tenant paid a \$100.00 fee for having someone fix the washing machine, but the landlord has refused to reimburse the tenant stating that it was the tenant's responsibility.

The tenant claims \$1,000.00 for return of the security deposit; \$100.00 for the washer repair; and \$100.00 as recovery of the filing fee.

The landlord testified that everything was new at the beginning of the tenancy including the appliances. The landlord kept the security deposit for that reason.

Numerous paragraphs in the tenancy agreement are not lawful, and the landlord testified that no ill-will was intended, but misinterpretation. It was not the landlord's intention to breach the law.

The rental unit was re-rented for September 1, 2020 and was advertised 10 days before the end of July on Craigslist and Facebook Marketplace. When the tenant paid rent on July 1, 2020, she said she was looking for a new place, and the landlord told the tenant that if the landlord could re-rent for August, the landlord would return the \$1,000.00 security deposit to the tenant. The tenant said that she had left some belongings in the rental unit, and the landlord didn't go inside until the key was returned by the tenant around July 21 or 22. The tenant voluntarily offered to give the security deposit to the landlord; there was no pressure. Damages existed at the end of the tenancy which were pointed out by the tenant, such as damages in the bathroom and carpet.

The tenant was never asked to pay August rent, but the landlord offered to refund it if the rental unit was re-rented.

The landlord has not served the tenant with an Application for Dispute Resolution claiming against the security deposit.

The landlord submits that the tenant agreed in writing, took advantage of the landlord, and then the tenant's boyfriend pressured her to apply for return of the security deposit months after the tenancy ended.

Analysis

Firstly, a landlord may only collect half a month's rent as a security deposit, not a full month. However, the *Act* states that if a landlord collects more, the tenant may reduce rent

by that amount. In this case, the tenant didn't do so throughout the tenancy, and I find that the landlord holds \$1,000.00 in trust as a security deposit even though it is more than a landlord is entitled to collect.

I have read all of the evidentiary material, and it is clear that the parties agreed to end the tenancy effective July 19, 2020. That means that the tenant pays rent to that date. The parties agree that the tenant vacated the rental unit on or about July 15, 2020 and paid rent to the end of July, although the landlord testified that she didn't get the key from the tenant until about July 21 or 22. The landlord is not entitled to rent for the month of August due to the Mutual Agreement to End Tenancy, whether or not the landlord was able to re-rent for August 1, 2020. The tenant's position is that she signed the agreement to keep the security deposit to avoid having to pay the landlord rent for August as well as another landlord.

I have also reviewed the hand-written note signed by the parties indicating that the tenant agreed that the landlord could keep the security deposit, however that agreement specified that the landlord would return it to the tenant, only if the landlord was able to re-rent for August. **Given that there is a condition on the agreement, I am not satisfied that the tenant forfeited her right to return of the security deposit.**

The tenant has not provided the landlord with a forwarding address in writing except in this Application for Dispute Resolution. I find that the landlord has the tenant's address, and **I order that the landlord has 15 days from today's date to return the security deposit in full or make an Application for Dispute Resolution claiming against the security deposit.** If the landlord fails to do either, the tenant will be at liberty to claim double the security deposit. The tenant's application for a monetary order for return of the security deposit is **dismissed with leave to reapply.**

The tenant has not provided any evidence of paying another party to repair the washing machine, and therefore I dismiss the tenant's application in that regard.

The tenant was not able to provide specific dates that rent was increased contrary to the law, but testified that almost every year in March rent was increased without a Notice of Rent Increase and testified to the amounts. The tenant's application seeks \$1,000.00 for return of the security deposit; \$100.00 for recovery of the filing fee and \$100.00 for repairing the washing machine. No where in the application does it put the landlord on notice that the tenant seeks recovery of any illegal rent increase, and I decline to make any orders in that regard.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application for a monetary order for return of the security deposit is hereby dismissed with leave to reapply.

The tenant's application for recovery of money paid for repair to the washer is hereby dismissed.

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: October 29, 2020

Residential Tenancy Branch