



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “*Act*”) for the recovery of their security deposit, for a monetary order compensation under the *Act*, and for the return of their filing fee. The matter was set for a conference call.

The Tenant and the Landlord attended the conference call hearing and were each reminded of the affirmation they provided during the first proceedings. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of their security deposit, pursuant to section 38 of the *Act*?
- Is the Tenant entitled to monetary compensation for damages under the *Act*?
- Is the Tenant entitled to the return of their filing fee for this application?

Preliminary Matter – Request for the production of Documents

At the end of this, the second hearing on the Tenant’s application, during final submissions, the Tenant requested that the Landlord be ordered to produce additional evidence to these proceedings, specifically, copies of utility bills.

The Tenant was reminded of the Residential Tenancy Branches Rules of Procedure regarding evidence submissions and advised that it was inappropriate, at this late junction in these proceedings, to be making this request. The Tenant's request was not granted.

Background and Evidence

Both parties agreed that the tenancy began on June 1, 2019, as a six-month fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of \$800.00 was to be paid by the first day of each month, and that the Tenant paid the Landlord a \$400.00 security deposit at the outset of the tenancy. It was also agreed that this tenancy ended on July 2, 2020, when the Tenant, after providing the required notice to the Landlord, moved out of the rental unit. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the Tenant provided the Landlord with their forwarding address by Canada Post Registered mail, sent on August 21, 2020 and that at no time had the Landlord been given written permission to keep the deposit.

The Landlord testified that they had not returned the deposit to the Tenant or made a claim against the deposit as of the date of these proceedings.

The Tenant testified that they are claiming for \$300.00 for loss of quiet enjoyment due to the Landlord infringing on their right to privacy. The Tenant testified that the Landlord attend the rental property to often during the tenancy, and that during these visits, the Landlord held renters meetings. Additionally, the Tenant testified that during these renters meetings the Landlord put in place stick house rules that infringed on the Tenant's rights. The Tenant testified that the Landlord attended the rental property once in October 2019, once in December 2019, twice in February 2020 and twice in March 2020.

Both parties agreed that there were three housemates residing on the rental property and that this tenancy consisted of a rented private room that included the use of common/shared areas of the home with other renters/housemates; common areas including the bathroom, kitchen, and living room. The parties also agreed that the house rules were related to cleaning, where personal items could be stored and quiet hours.

The Landlord testified that they had received numerous complaints about the Tenant from the other renters living in the rental unit. The Landlord testified that the complaints

they received were regarding noise, mess and hygiene issues caused by the Tenant. The Landlord testified that they attended the property on the request of the other renters in order to deal with the complaints they were receiving. The Landlord testified that they spoke to the Tenant each time they received a complaint and that they attempted to mediate reasonable house rules in an attempt to get the three housemates to get along. The Landlord submitted 12 pages of emailed complaints into documentary evidence.

The Tenant testified that they are also claiming for three months rent, \$2,400.00, in compensation and \$180.00 in a moving truck rental, due to being forced out of the rental unit. The Tenant testified that due to the constant interference of the Landlord, combined with the harassment of the other renters, they had been asked to leave and were illegally forced out of the rental unit.

The Landlord testified that they agreed that the three renters did not get along and that the living situation between them was strained but that they had only sought to help the renters find a common ground where they could all live together comfortably. The Landlord agreed that due to the Tenant's refusal to clean up after themselves, the other two renters had told the Landlord that they wanted the Tenant out and that they did approach the Tenant about willingly leaving.

The Landlord testified that they never forced the Tenant out of the rental unit but that the Tenant chose on their own to end their tenancy by giving written notice to end the tenancy to the Landlord.

The Tenant agreed that they gave written notice to end their tenancy to the Landlord but that they had only done this because the Landlord had asked them to leave.

The Tenant testified that they are also seeking to recover a \$29.45 overpayment in utilities for this tenancy. The Tenant testified that the utilities were to be evenly split between each person that lived in the rental unit. The Tenant testified that in July 2020, they received a request for payment from the Landlord for the utilities that indicated that, of the three people residing in the unit, two were to pay \$96.48 each and the third person was to pay 49.48, the tenant is claiming that they had been overcharged \$15.68 in July 2020. The Tenant was unable to testify to the details of the remaining \$13.77 of this portion of their claim and requested to reduce this portion of their claim to \$15.68. The request to reduce was granted during these proceedings.

The Landlord testified that the utility bill was divided differently for July 2020, but that it was due to the fact that the third person did not live in the rental unit for the full period of

that bill and that their rate had been prorated bases on the date they moved into the rental unit.

The Tenant testified that they are also requesting compensation in the amount of \$975.00 for the landlord not providing additional storage space as per their verbal agreement at the beginning of the tenancy. The Tenant testified that they are claiming for a \$156.00 storage fee for six months, plus a \$21.00 registration fee, as quoted by a local storage company; the Tenant submitted a copy of the quote into documentary evidence.

The Landlord testified that they did provide the requested storage of additional shelf space for dishes and food. The Landlord testified that at no time had they agreed to provide the Tenant with a separate storage unit, like the one quoted in the Tenant's claim.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the agreed-upon testimony of these parties and find that this tenancy ended on July 2, 2020, the date the Tenant moved out of the rental unit and that the Tenant provided their forward address to the Landlord by a registered mail sent on August 21, 2020. Pursuant to section 90 of the Act, I find that the Landlord was deemed to be in receipt of the Tenant's forwarding address five days later, on August 26, 2020. Accordingly, the Landlord had until September 10, 2020, to comply with section 38(1) of the Act by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlords, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenant has successfully proven that they are entitled to the return of double their deposit. I find for the Tenant, in the amount of \$800.00, granting a monetary order for the return of double the security deposit paid for this tenancy.

The Tenant has also claimed for \$300.00 in compensation due to a loss of quiet enjoyment during their tenancy. The Tenant stated that the Landlord set restrictive

house rules on common areas and that the Landlord had attended the rental unit an unreasonable number of times during this Tenancy. Section 28 of the Act states the following regarding a tenant's right to quiet enjoyment:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Section 28(1a) states that a tenant has the right to reasonable privacy; I accept the Tenants testimony that the Landlord attended the rental unit once in October 2019, once in December 2019, twice in February 2020 and twice in March 2020. Section 29 of the Act sets the restricted right of the Landlord to enter the rental unit, stating the following:

Landlord's right to enter rental unit restricted

29 (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
- (d) the landlord has an order of the director authorizing the entry;*
- (e) the tenant has abandoned the rental unit;*

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Pursuant to sections 29(1a) and 29(2), a landlord is within their rights to enter a rental unit once a month for an inspection or at any time when a tenant residing in the rental unit invites them.

I accept the Landlord's testimony supported by the Landlord's documentary evidence that they attended the rental unit on the dates in question at the request of the other renters living in the rental unit. Therefore, I find that the Landlord had been invited to the rental unit by at least one of the two other renters residing on the rental property, and that due to the other renters inviting the Landlord on to the property the Landlord was within their rights to be there and was not infringing on this Tenant's when they attended the rental unit.

Additionally, section 28(d) states that a tenant has the right to the use of common areas for reasonable and lawful purposes, free from significant interference. I accept the agreed-upon testimony of these parties that there were "house rules" for this rental property for the use of common areas by the renters residing on the property.

I also accept the agreed-upon testimony of these parties that the house rules for common areas were created during "renters" meetings in which the Tenant, the Landlord and the two other renters all attended, and that the rules created during these meetings were in relation to the cleaning of common areas, quiet times and storage.

Sometimes tenants under separate tenancy agreements share common space, including a kitchen, bathroom and living area. It is not uncommon for tenants living in these types of rental agreements to have "house rules" regarding cleaning and quiet hours. I have reviewed the testimony of these parties and their documentary evidence regarding the "house rules" for this tenancy, and I find that the house rules were reasonable and would not have significantly interfered with this Tenant's right to the quiet enjoyment of the shared rental unit that had rented. Therefore, I dismiss the Tenant's claim for compensation due to loss of quiet enjoyment.

I acknowledge that the Tenant's testimony that they felt restricted and that they were unhappy residing on the property with these house rules. However, a tenant choosing to live in a shared accommodation such as this one must understand that there will have

to be some accommodations made for the use of shared spaces in order to provide the enjoyment of the property to all people residing on the rental property, as all renters have the right to the quiet enjoyment of the rental property.

Additionally, the Tenant has claimed for compensation in the amount of \$2,400.00, the equivalent of three months rent, and \$180.00 for a moving truck due to the Landlord forcing them to move out of the rental unit. However, I accept the testimony of these parties that this tenancy ended due to the Tenant's decision to issue a notice to end their tenancy to the Landlord. As it was the Tenant who ended this tenancy, not the Landlord, I must dismiss the Tenant's claims on both these points in their entirety.

As for the Tenant's claim for the recovery of an overpayment of \$15.68 in utilities for July 2020, I find that the parties offered conflicting verbal testimony regarding the possible overpayment of the July 2020 utility bills. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Tenant.

I have reviewed the Tenant's documentary evidence, and I find that there is insufficient evidence before me to show that there had been an overpayment of utilities during this tenancy. Accordingly, I must dismiss this portion of the Tenant's claims.

The Tenant has also claimed for \$975.00 in compensation for the Landlord not providing storage as verbally agreed to during this tenancy. Again, the parties, in this case, offered conflicting verbal testimony regarding the promised storage. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the Tenant's documentary evidence, and I find that there is no evidence before me that proves the Tenant's accounts of this verbal agreement over that of the Landlord. In the absence of sufficient evidence to proof the Tenant's account of this verbal agreement, I must dismiss this portion of the Tenant's claims.

Finally, the Tenant has claimed for compensation for Canada Post fees for costs to mail documents related to these proceedings. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not permit a party to claim for compensation for other costs associated with participating in the dispute resolution process. Therefore, I dismiss the Tenant's claim to recover Canada post fees.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been partially successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that the Landlord breached section 38 of the *Act* when they failed to repay or make a claim against the security deposit as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$900.00**. The Tenant is provided with this Order in the above terms, and 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.

I dismiss the remainder of the Tenant's claim.

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: February 25, 2021

Residential Tenancy Branch