



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary order for compensation for damage or loss – Section 67;
2. An Order for return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing the Tenant requested an adjournment to provide evidence. The Tenant states that while out of the unit during the months of May and June 2011, the Tenant’s evidence package of materials were stolen during a break-in and that the Tenant was unable to recreate the evidence for the Hearing. The Tenant states that this package contained evidence including a copy of the lease agreement, rent receipts, security deposit receipt, documents on damage to her car and pictures of flood damage to the unit. The Tenant states that last week it was discovered that some of these documents were on her computer but that since she could not provide these documents within 5 days of the Hearing she believed that she had no opportunity to submit these documents other than through asking for an adjournment. The Landlord objected to the adjournment and states that the Tenant’s claim has no merit and that to adjourn the dispute would prolong matters unnecessarily and cause the Landlord prejudice. It is noted that the Tenant provided no written description of her claim and no supporting evidence with the application for dispute resolution.

As the Tenant did not provide any description of her claim with the application, did not send in any description of the content of her claim within 3 or 5 days of the Hearing, and did not act diligently to search and retrieve documents off her computer that may have been submitted to support her claim and considering prejudice to the Landlord from a delay, I find that the Tenant is not entitled to an adjournment.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on December 1, 2007 and ended on June 30, 2011 pursuant to a Notice to End Tenancy for Landlord's use. Rent originally at \$700.00 and payable in advance on the first day of each month was reduced at some point in the tenancy to the amount of \$650.00. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$350.00. The Tenant states that no written forwarding address was provided to the Landlord and it is noted that the application contains her disputed tenancy address and not the Tenant's current address.

The Tenant states that between December 1, 2010 and June 30, 2011, she was subjected to harassment from the upper tenant and that despite advising her Landlord repeatedly, nothing was done. The Tenant states that the harassment consisted of loud noises and music, fighting, and the upper tenant repeatedly coming down to the Tenant's unit while drunk and harassing the Tenant over such things as suspicion of a grow-op being present. The Tenant states that the upper tenant also took pictures of her 10 year old son and mother, without permission. The Tenant states that the police were called on numerous occasions and that on one occasion, on December 24, 2010, the upper tenant was arrested by police. The Tenant states that the Landlord was called on each of these occasions which occurred at least six times each month and

that the Landlord only responded on one of those occasions and thereafter refused to deal with the Tenant's complaints of the upper tenant's behaviour. The Tenant states that third parties who know the upper tenant have informed the Tenant that the upper tenant is now bragging that she caused the Tenant's eviction. The Tenant further states that the Landlord placed a bar on the door of the laundry room in approximately March 2011 and that the Tenant could no longer access the laundry as provided for her in the lease.

The Landlord states that the Tenant only called once or twice and that he responded by attending the building and speaking with both the Tenant and the upper tenant. The Landlord states that he was not informed of the upper tenant ever being arrested and does not believe the Tenant's evidence on this point. The Landlord states that the Tenant's boyfriend was the cause of the problems and that the upper tenant was afraid of the boyfriend. The Landlord states that the Tenant never had a right of access to the laundry as this was not provided for by the lease and that the Tenant was only provided access to the laundry for a period of months leading up to the time when the bar was placed on the laundry room. The Landlord states that this bar was placed on the laundry room to protect the upper tenant as this room provided access between the units. The Landlord further states that the Tenant's boyfriend at some time broke this door and that as of May 19, 2011, the Tenant's boyfriend was placed under a restraining order from being at the property. The Tenant confirmed this restraining order.

The Tenant states that the unit flooded in December 2007, June 2008 and twice in June 2010. The Tenant states that she did not complain about the flooding or make claims for damages from the flooding until after the flood in June 2008 and that the Landlord did respond by providing the Tenant with \$80.00 to purchase an air mattress and brought in a dehumidifier. The Tenant states that she did not inform the Landlord of the two floods in June 2010. The Landlord confirms that he knew nothing of the flood incidents in June 2010 and states that the Tenant had no issue with his response to the previous floods before the ending of the tenancy.

Finally, the Tenant states that no member of the Landlord's family has moved into the unit as claimed in the Notice of Landlord's use of property and that the upper tenant's family has moved into the unit instead.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. As the Tenant has not provided her forwarding address to the Landlord, I find that her claim for return of the security deposit is premature and I dismiss this part of the application with leave to reapply.

In a claim for damage or loss under the Act, the party claiming costs for the damage or loss must prove on a balance of probabilities that, inter alia, the damage or loss claimed was caused by the actions or neglect of the responding party. Considering the undisputed evidence that the Tenant's boyfriend was placed under a restraining order, I find that the Tenant has failed to establish on a balance of probabilities that the Landlord was responsible for the loss of quiet enjoyment of the unit and I dismiss this part of the Tenant's application.

Accepting the undisputed evidence that the Tenant did not inform the Landlord of any problems following the two floods in June 2011 and considering the lack of evidence of damages, I find that the Tenant failed to establish on a balance of probabilities that the Tenant suffered any loss. Taking into account the undisputed evidence that the Landlord responded to the flood in June 2008 and the time lapse between the first two flood and the application, I find that the Tenant did not act in a timely matter to raise any losses beyond those that were met by the Landlord and I therefore dismiss this part of the application.

As the Tenant's statement that no family member of the Landlord has taken possession of the unit is evidence of an event that arose after this application was made and not a part of this application, the Tenant is at liberty to make an application to pursue any rights she may have with respect to such a claim.

As the Tenant's claims were largely without merit, I make no order in relation to the filing fee.

Conclusion

The application is dismissed with no leave to reapply with the exception of the leave to reapply given in relation to return of the security deposit.

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: September 19, 2011.

Residential Tenancy Branch