Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

At the outset of the April 26, 2012 hearing the Advocate requested an adjournment to ensure the Landlord was given ample opportunity to receive the evidence they wished to rely upon. I agreed and the hearing was reconvened for this session, May 22, 2012 at 1:00 p.m.

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for Money Owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and for the return of the security deposit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on February 22, 2012. Mail receipt numbers and proof of receipt were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord was sufficiently served notice of this proceeding in accordance with the Act.

The Tenant and her Advocate appeared at the teleconference hearing. The Tenant gave affirmed testimony and noted that the Canada Post website indicated the Landlord refused the registered mail evidence package on April 26, 2012. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Did the Tenant and respondent Landlord enter into a tenancy that is covered under the *Residential Tenancy Act*?
2. If so, has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

The Tenant affirmed that she entered into a tenancy agreement with the Landlord as supported by her evidence which included, among other things, a copy of a signed, hand written document which indicates she paid $100.00 as a security deposit and rent would be $375.00 for the room and board situation.

The Tenant advised that the rental unit was a separate self contained basement unit with two bedrooms and its own kitchen and bathroom and her tenancy was to be for shared accommodations with another tenant. She was to occupy one bedroom and the other tenant was to occupy the other bedroom and the two of them shared the kitchen and bathroom. The Landlord resided in the upstairs of the house in a separate living space.

The Tenant said her tenancy began December 1, 2011 and that she paid $375.00 for December 2011 and January 2012 however she was forced to vacate the property on January 13, 2012 after having to live for almost ten days without the use of water and sewage drainage. She referenced copies of several e-mails that were provided in her evidence in support of her testimony about a pump that was used to drain the toilet which broke on December 28, 2011. She said that the Landlord fixed it the first time relatively soon and then it broke again on January 4, 2012 causing raw sewage to seep up into the shower. On January 6, 2012 the shower overflowed with sewage and the Landlord told her he was out of town so he instructed her to use a bucket and shovel which she could access from outside. When she returned home on January 11, 2012 she was overwhelmed with a cloud of chlorine fumes when she noticed the Landlord had come into the unit, without notice to fix the pump, and he had left the raw sewage on the floor and poured chlorine over it. She knew at that time she could not continue living there so she dropped out of school and vacated the property on January 13, 2012.

The Tenant acknowledged that there were at least ten full days where she did not have full or proper usage of the toilet and water drainage and lived with having raw sewage coming up through the shower drain and being left on the floor by the Landlord.

The Tenant confirmed she sought assistance through an advocate in the same municipality as the rental unit and he assisted her to write a letter to the municipal building inspector to file a complaint. Then she relocated and sought help to get the return of her two month's rent and her security deposit. Her forwarding address was

sent to the Landlord registered mail on February 9, 2012 and was signed received by the Landlord on February 13, 2012, as supported by the Canada Post receipts in her evidence.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her documentary evidence.

Section 5 of the Act stipulates that landlords and tenants may not avoid or contract out of this Act or the regulations; and any attempt to avoid or contract out of this Act or the regulations is of no effect.

Upon consideration of the evidence before me I find the Tenant entered into a tenancy agreement, as defined under the *Residential Tenancy Act*, for a self contained basement suite for 1 bedroom with access to a kitchen and bathroom shared with one other tenant.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law; and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case the evidence proves the toilet pump first failed on December 28, 2012 and then again on January 4, 2012. The Landlord issued an e-mail January 4, 2012 informing the Tenant he was cancelling her tenancy. The problem remained that way until the Tenant ended her tenancy by vacating the property on January 13, 2012

Policy Guideline 6 states that when determining the amount by which the value of the tenancy has been reduced, the Dispute Resolution Officer should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

Based on the aforementioned I have considered that the Tenant occupied the unit for the entire month of December 2011 with one day of interruption due to toilet problems and there was only three days in January 2012 without problems before the Landlord attempted to cancel her tenancy. Therefore, I find the Tenant is entitled to

compensation in the amount of **$375.00**, an amount equivalent to one full month's rent, as loss of quiet enjoyment of the rental unit.

In this case the tenancy ended January 13, 2012, when the Tenant vacated the property, and the Landlord received the Tenant's forwarding address on February 13, 2012.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

The Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than February 28, 2012. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Accordingly I award the Tenant **$200.00** (2 x $100.00 + $0.00 interest) as the return of double her security deposit.

Conclusion

The Tenant has been granted a Monetary Order in the amount of **$575.00** ($375.00 + $200.00).

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: May 22, 2012.

Residential Tenancy Branch