



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, 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 return of double the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Was the Landlord’s right to claim against the security deposit extinguished?

Is the Tenant entitled to compensation for loss of business revenue?

Is the Tenant entitled to recovery of the filing fee?

Relevant Background and Evidence

The following are undisputed facts: The tenancy started on January 1, 2014 and ended on January 9, 2016. Rent of \$1,650.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$825.00 and a pet deposit of \$400.00. Although the Parties did a walk through at move-in no condition inspection report was completed with a copy provided to the Tenant. On January 9, 2016 the Tenant provided its forwarding address in writing to the Landlord.

The Landlord states that on January 9, 2016 the Tenant was sent a cheque for \$530.00. The Landlord states that this cheque has not been cashed and they believe that it may now be stale dated.

The Tenant states that no cheque was received from the Landlord. The Tenant claims return of double the combined security and pet deposit.

The Tenant states that between July 2014 and March 2015 power outages occurred about 3 or 4 times a month during renovations being done to the lower rental unit. The Tenant states that the outages occurred with no more notice than 5 minutes and affected her telephone, fax and computer. The Tenant states that she was unable to use her cell phone as access as there was no wireless and the Tenant did not have data for use. The Tenant states that when her clients could not contact the Tenant they took their business elsewhere causing the Tenant lost commission on the two bookings. The Tenant cannot state exactly when the outages occurred that affected her clients. The Tenant states that she lost business income of approximately \$40,000.00. The Tenant states that she wrote an email to the Landlord mid-August 2014 about the power outages. The Tenant states that no copies of these emails were available as they were sent on an email system that she no longer had access to after her business ended in February 2016. The Tenant provides copies of two invoices dated January 20 and April 1, 2015 with handwritten notes on the invoices setting out the commission that was to accrue from the invoices. The Tenant states that she has no accounting records. The Tenant claims \$10,000.00.

The Landlord states that they were aware from the outset of the tenancy that the Tenant was operating a business in her home. The Landlord submits that renovations were done between June and August 2014 and then not again until one month during the summer of 2015. The Landlord states that the power went off a dozen times during the renovations. The Landlord states that they never received any email from the Tenant during the entire tenancy. The Landlord states that they responded immediately when they received a letter from the Tenant. The Landlord states that they also lived next door to the Tenant and nothing was ever said about power outages and loss of income until in the late summer or fall of 2015. The Landlord states that they immediately spoke with the lower tenant. The Landlord states that the Tenant's use of her heater and air conditioner also caused power outages on various occasions to both

the upper and lower unit. The Tenant states that the air conditioner was used starting August 2015. The Landlord provides a Witness letter from the lower tenant in relation to the power outages and the date of renovations.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. The Tenant's evidence of business loss and causation is vague and tenuous. Given the Landlord's Witness letter I accept that renovations did not occur between December 2014 and April 2015, the period indicated by the Tenant's invoices. Accepting the Landlord's undisputed evidence that the Tenant's heater also caused power outages during this period, I find that the Tenant has not substantiated on a balance of probabilities that any business loss was the result of any act or negligence of the Landlord or the lower tenant in carrying out renovations.

I therefore dismiss the Tenant's claim for compensation.

Section 23 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and the landlord must complete a condition inspection report and provide a copy to the tenant in accordance with the regulations. Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. As the Landlord failed to conduct a move-in inspection completing a report and providing a copy to the Tenant I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

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. Where a Landlord fails to comply with this section, the landlord must pay the

tenant double the amount of the security deposit. As the Landlord's right to claim against the security deposit was extinguished at move-in the Landlord was required to return the full amount of the security deposit to the Tenant within 15 days of January 9, 2016. As the Landlord only returned \$530.00, I find that the Landlord is therefore now required to pay the Tenant double the combined security and pet deposit plus zero interest of **\$2,500.00** (\$1,225.00 x 2). Without determining whether the Landlord sent the Tenant partial refund, given the Landlord's evidence that no cheque has been cashed, I find that no deduction may be made from the entitlement. As the Tenant's application has been successful in relation to the security deposit I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,600.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$2,600.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: November 18, 2016

Residential Tenancy Branch