



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing dealt with the tenant's application for return of the security deposit, compensation for loss of quiet enjoyment and excessive gas consumption, and recovery of the filing fee. Both parties were represented at the hearing and were provided an opportunity to be heard and to respond to the other party's submissions.

As a preliminary issue it was determined that the male landlord's name was spelled incorrectly on the tenant's application. Both parties consented to changing the application to reflect the correct spelling of the landlord's name. The tenant also clarified that the tenancy agreement identifies the tenant by a shortened version of her name that she commonly uses; however, this application was made using her legal name.

Issues(s) to be Decided

1. Has the tenant established an entitlement to return of her security deposit, and if so, the amount?
2. Has the tenant established an entitlement to compensation for loss of quiet enjoyment of the rental unit?
3. Has the tenant established an entitlement to recover a portion of her gas bill from the landlords?
4. Award of the filing fee.

Background and Evidence

Upon hearing testimony from both parties, I make the following findings. The month-to-month tenancy commenced March 9, 2008 and the tenant paid a \$300.00 security deposit on that date. The rental unit is one side of a duplex. The other side of the duplex is also owned by the landlords and is rented to a 16 year-old tenant. The tenant telephoned the landlords on March 7, 2009 to advise the landlords she had vacated the rental unit. The parties met at the rental unit on March 14, 2009 to conduct a move-out inspection and the tenant provided her forwarding address on the inspection report. The tenant was uncertain as to her forwarding address postal code; however, each party independently verified it sometime after the move-out inspection. The landlords mailed a cheque to the tenant at the forwarding address in the amount of \$300.00 on March 30 or March 31, 2009 and it was received by the tenant on April 2, 2009.

The tenant submitted that the security deposit was refunded more than 15 days after she provided a forwarding address to the landlords and the tenant is entitled to receive double the security deposit. The landlord submitted that he sent a letter to the tenant advising her that he intended to file a claim against the security deposit; however, upon securing a tenant for April 2009 the landlord sent the tenant her security deposit. In the landlord's written submission, the landlords state they provided a letter to the tenant by depositing it in her mailbox on March 28, 2009. On March 29, 2009 a new tenant was secured for the rental unit and on March 30, 2009 the landlord's mailed the \$300.00 to the tenant. The landlord verbally testified that a cheque was mailed on March 31, 2009. A copy of the cheque was provided as evidence; however, the date on the cheque only reads "March/2009".

The tenant is claiming compensation of \$200.00 for loss of quiet enjoyment of her rental unit. The tenant quantified the loss as wages lost on February 27, 2009 when she could not go to work after the neighbouring tenant and her guests were partying from 1:00

Residential Tenancy Branch
Ministry of Housing and Social Development

a.m. until 3:30 a.m. When the tenant was telephoned for work at 5:00 a.m. she had barely any sleep and could not go in to work. The tenant claimed this was the second significant interference she had from the neighbour. The first incident occurred on January 3, 2009 when there was partying next door and someone attempted to enter the tenant's unit. The tenant complained to the landlord about the incidents of January 3, 2009 and February 27, 2009.

The landlord acknowledged the tenant had contacted him after the incident of January 3, 2009. The landlord stated that he responded to the complaint by contacting the neighbouring tenant, advising her quiet hours begin at 10:00 p.m. every night and the landlord contacted that tenant's case worker and social worker to ensure that tenant behaved in accordance with the tenancy agreement requirements. The landlord claimed that the tenant did not make any further complaints about the neighbour so the landlord was of the belief that the issue of late night noise had been dealt with and the landlord was of the opinion he had acted adequately to protect the tenant's quiet enjoyment of her rental unit.

The tenant is seeking compensation of \$195.00 for excessive gas consumption the tenant attributes to a faulty hot water heater. The tenant submitted copies of her gas bill for January and February 2009. The January 2009 bill indicates the December 2008 bill was \$79.80 and the January 2009 bill was \$43.87. The February 2009 bill shows a balance owing of \$276.61 for consumption from January 12 – February 10, 2009. The tenant testified that she notified the landlord at the beginning of her tenancy that she was not receiving an adequate amount of hot water and the tenant made other verbal complaints when the landlord would attend the rental unit for other issues.

The landlord advised the tenant to turn up the hot water tank thermostat to a higher setting. The tenant turned the hot water tank thermostat up at night so that she would

have hot water in the morning and turned the tank down during the day to prevent scalding of her grandchild. On February 22, 2009 the tenant heard hissing from the hot water tank, phoned the landlord and a repairman came the next day to install a new tank. The installer told the tenant it appeared as though the old tank had been leaking for some time.

The landlord testified that the gas company only reads the gas meters every second month and estimates the readings for the other months. The reading for January 2009 was an estimate and is was underestimated. Then the meter was read in February 2009 and the bill was high to take into account the underestimation in January 2009. The landlord testified that he had talked to the gas company and the plumber about the gas consumption in the rental unit. According to the landlord, the gas company acknowledged that the bills for February 2009 were large for many customers in that area due to the exceptionally cold winter weather. The landlord submitted that the plumber advised that it was likely the high gas bill was attributable to the low estimate for the previous month and the exceptionally cold weather that resulted in the water intake being very cold and causing the hot water tank to have to work that much harder to heat up the very cold water coming into the house. The plumber did not attribute the high gas consumption to the hot water tank leaking. The landlord provided a copy of the plumber's letter as evidence for the hearing. The landlord pointed to the January 2009 gas bill which shows that the meter reading was only an estimate. The landlord also pointed out that if the hot water tank was to blame for high gas readings, then the previous months would be high and they were not.

Analysis

Security deposit

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent to retain the security deposit, or the

landlord must return the security deposit to the tenant or make an Application for Dispute Resolution to retain it within 15 days of the later of the tenancy ending or receiving the tenant's forwarding address in writing. When the tenant vacated the rental unit on March 7, 2009 the tenancy ended in accordance with section 44 of the Act. From the testimony I heard, I am satisfied the tenant provided a forwarding address to the landlords in writing on March 14, 2009. Therefore, the landlord had until March 29, 2009 to either repay the security deposit, plus interest, or make an application to retain it since the tenant had not authorized the landlords to keep it. If a landlord does not comply with these requirements, section 38(6) provides that a landlord must pay the tenant double the security deposit.

In light of the above, the landlord did not have the legal right to retain the tenant's security deposit after March 29, 2009. Since the landlords mailed the security deposit to the tenant on March 30, 2009 or March 31, 2009 the landlords did not comply with the Act, albeit by only a day or two; however, the Act is clear that the landlords must pay the tenant double the security deposit. Taking into account the tenant has already received \$300.00 I award the tenant \$300.28, including the accrued interest the landlords should have paid on the original deposit.

Loss of quiet enjoyment

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment of the rental unit including freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides a basis for finding a breach of quiet enjoyment. The policy guideline states that "frequent or ongoing interference by the landlord, or, if preventable by the landlord as he stands idly by while others engage in such conduct, may form a basis for a claim of breach of the covenant of quiet enjoyment." Interference includes unreasonable and ongoing noise; however, temporary discomfort or inconvenience does not constitute a basis for a breach of the

Residential Tenancy Branch
Ministry of Housing and Social Development

covenant to quiet enjoyment. A tenant may file a claim for damages against the landlord if the landlord engages in interference or fails to take reasonable steps to prevent such conduct by other tenants.

Upon hearing the testimony of both parties, I find the landlord took reasonable steps to prevent the other tenant from disturbing the tenant making this claim. I also accept that the landlord was not aware that disturbances were ongoing until the February 27, 2009 disturbance. Therefore, I do not find the landlord sat idly by and permitted the other tenant to continue to disturb the tenant. Rather, I find the tenant could have done more to minimize her disturbance by contacting the police and making more complaints to the landlord.

In light of the above, I do not find the tenant satisfied me that the landlord caused or permitted ongoing or frequent disturbances of the tenant's quiet enjoyment and I do not find the tenant entitled to compensation from the landlord.

Gas bill

The tenant was required to pay for natural gas as part of her tenancy agreement. For a tenant to recover a portion of the gas bill from the landlord, it would be necessary to find that the landlord violated the Act, regulations or tenancy agreement and that the violation caused the tenant to incur a loss. The Act requires that a landlord repair and maintain a property in a state that complies with health, safety and housing standards and makes it suitable for occupation by a tenant.

The tenant claimed that the landlord knew of the faulty hot water heater since the time the tenancy commenced. The landlord claimed he did not know the hot water heater was inadequate after he advised the tenant to turn up the thermostat. The tenant acknowledged that her complaints were verbal and that she did not complain in writing

until February 24, 2009 when she deducted \$195.00 from her March 2009 rent cheque for the excessively high gas bill.

Both parties provided a possible explanation for the high gas bill in February 2009. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find the landlord's explanation for the high gas bill to be a reasonable one given the estimation of the January bill, the exceptionally cold winter weather and the plumber's opinion with respect to the leak and possible causes for the high gas bill. Therefore, I find the tenant has not met her burden to prove that her explanation is more probable than the landlord's and the tenant's claim for compensation is denied.

Filing fee

As the tenant was partially successful with this application, I award the tenant one-half of the filing fee, or \$25.00.

Monetary Order

The tenant has established an entitlement to a Monetary Order in the total amount of \$325.28 for receiving return of her security deposit more than 15 days after providing a forwarding address, accrued interest on the original deposit and part of the filing fee. The tenant must serve the landlords with the Monetary Order and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.



Dispute Resolution Services

Page: 8

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

The tenant was partially successful in this application and is provided with a Monetary Order in the total amount of \$325.28 to serve upon the landlords. The remainder of the tenant's claims are dismissed without leave to reapply.

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: June 17, 2009.

Dispute Resolution Officer