

DECISION AND REASONS

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for a monetary Order for loss or damage, the cost of emergency repair and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

Issue(s) to be Decided

Are the tenants entitled to costs related to emergency repairs?

Are the tenants owed money for loss of services and personal belongings?

Are the tenants entitled to return of double the deposit paid?

Background and Evidence

The tenants testified that the tenancy commenced June 1, 2008 and terminated on March 1, 2009. The tenants were renting a trailer from the landlord for rent of \$750.00; a \$375.00 deposit was paid on June 1, 2008.

The tenants testified that on December 17, 2008 the water pipes froze and that on that date the landlord unsuccessfully attempted to repair the problem. The tenant testified that water leaked in the laundry room for one month and that until the pipes were repaired their water pressure was substandard. The tenant stated that due to the loss of use of the laundry, low water pressure which resulted from the leak in the laundry room and the damage to linens and towels needed to soak up leaking water, that they are entitled to compensation in the sum of \$109.89. The tenant testified that the landlord had offered them no compensation or alternate living or laundry options.

The tenant testified that he lent the landlord \$20.00 to purchase a butane torch tip and that this money was not returned by the landlord.

The tenant testified that he left behind a number of items after moving and was not able to have the landlord agree to meet in order to retrieve these items. The tenant is claiming costs for the loss of cleaning items, a kettle, toaster, blender, waffle maker and coffee pot. A bed was left in the rental unit that was to go to the dump. The tenant did not place a dollar value on these items but agreed that they were not valued over \$500.00.

During the hearing both parties agreed that on March 3rd or 4th the landlord received the tenant's forwarding address and a request for return of the deposit paid by the tenant.

The landlord testified that he was aware of the potential for freezing and that he gave the tenants the option of having heat tape installed on the pipes, or that the tenant's could just leave the taps running. The landlord stated that the tenants did not have the heat tape installed as this would result in hydro costs to the tenants. The landlord testified that the female tenant told him she had turned off the tap the night prior to the pipes freezing. The landlord stated that the lack of a constant flow of water resulted in the pipes freezing.

The landlord testified that on December 17, 2008 he tried to repair the pipes and that on December 19, 2008 he crimped the water line in the laundry room to staunch the flow of water. The landlord stated that the water main to the trailer park needed to be shut down to complete the repairs. The crimped line resulted in a constant leak from the pipe, out the door of the laundry room. The landlord stated that the pipe leaked outside and that a pan was placed under the leak that had to be emptied once daily. The landlord testified that on January 10, 2009 the required repairs were made by a plumber.

The landlord testified that he offered the tenants a hotel room and the cost of laundering. This testimony was provided after the landlord had testified that the tenants had not lost the use of the laundry facilities.

The landlord stated that the items left behind by the tenants were disposed. The landlord testified that he and the tenant did discuss having the tenant come to the rental to pick these items up, but that a date and time were not set.

The landlord stated that he did receive the tenants forwarding address and that he did not apply for dispute resolution as he was told by a government official that he could not apply. The landlord confirmed that the deposit has not been returned to the tenants.

The tenant testified that there was not a move-in or move-out condition inspection completed.

Analysis

The landlord's testimony that the tenants could have either heat tape on the pipes or leave the taps running appears to place the tenants in a position where they are responsible for ensuring that freezing does not occur. It is the landlord's responsibility to maintain the rental unit in a state of repair that guards against potential freezing, taking into account the health, safety, sanitary standards and the potential loss of an essential service such as water.

Section 1 of the Act defines a utility, such as water, a service. I find that water is an essential service which in this case was not completely denied to the tenant's but was restricted to the tenants. I find that the tenant's testimony, on the balance of probabilities, provides an accurate account of the loss of water pressure and laundry services. I do not accept the landlord's testimony that the tenants were offered costs for laundry completed elsewhere and hotel room costs and have accepted the tenant's testimony that they were not offered a hotel or laundry costs. The landlord initially testified that there was no loss of laundry and then testified that the tenant's were offered costs for laundry services. This inconsistency in testimony causes me to find that the tenant's testimony has more weight and veracity.

I find that the tenants are entitled to compensation for the restriction of a service or facility in the sum of \$109.89.

The parties do not agree that the \$20.00 given to the landlord by the tenant was returned to the tenant. The landlord stated that he did return this money, the tenant denies this. I have accepted the tenant's testimony and find that the tenants are entitled to return of the \$20.00 lent to the landlord.

I find that the tenant has not provided adequate evidence of his attempt to retrieve the items left in the rental unit. The tenant has agreed that those items did not exceed a value of \$500.00. I find that the landlord has not breached the Regulations, which allow a landlord to dispose of items when the value is less than \$500.00.

The landlord has confirmed receipt of the forwarding address requesting return of the deposit on either March 3rd or 4th, 2009. I do not accept the landlord's testimony that he was denied the opportunity to make an application for dispute resolution within the 15 days required by the Act as the landlord is responsible for ensuring that he complies with the Act. Section 38 of the Act requires a landlord to either refund the deposit within 15 days of receipt of a forwarding address, or to make an application for dispute resolution.

In the absence of an application for dispute resolution within 15 days of receiving the tenant's forwarding address, I find that the tenant's are entitled to return of double the deposit paid to the landlord, as required by section 38 of the Act.

The landlord is holding a deposit of \$375.00 plus interest of \$3.29 in trust.

As the tenants application has merit I find that the tenants are entitled to filing fee costs.

I have appended a copy of section 38 of the Act after the conclusion of this decision.

Conclusion

I find that the tenant's are entitled to compensation in the sum of \$109.89 for loss of laundry facilities and costs associated with the frozen pipes.

I find that the tenant's are entitled to return of the \$20.00 loaned to the landlord by the tenants.

I dismiss without leave to reapply costs claimed for items left in the rental unit by the tenants.

I find the tenants are entitled to return of double the deposit paid, in the sum of \$750.00 plus interest of \$3.29.

Therefore; I find that the tenants have established a total monetary claim of **\$933.18** and I grant the tenants an order under section 67 for that amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Dated June 16, 2009.

Dispute Resolution Officer

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.