

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The tenancy began in June 2006 and ended on May 10, 2009. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00. I address the landlord's claims and my findings around each as follows.

[1] **Truck.** The landlord claims \$400.00 as the value of his truck which the tenant had removed from the property. The parties agreed that the landlord had left an older model, uninsured truck on the property. The tenant acknowledged that she arranged for a junk removal company to tow the vehicle away but testified that she had the landlord's written permission for the truck to be towed. The landlord denied having given her such authorization. In order to be successful in his claim, the landlord must prove not only that the tenant had the truck removed without his authorization, but he must prove the value of the truck. The landlord provided no supporting evidence to show the value of the truck and accordingly I find that the

landlord has not proven the quantum of his claim. The claim is therefore dismissed.

[2] **Junk removal.** The parties agreed that the landlord was entitled to an award of \$100.00 for the removal of the tenant's belongings which were left at the rental unit after the tenancy ended. Accordingly I award the landlord \$100.00.

[3] **Kitchen floor damage.** The landlord claims \$570.03 as the cost of replacing the laminate flooring in the kitchen. The landlord testified that the laminate was approximately 15 years old and was in good condition at the start of the tenancy. The parties did not complete a condition inspection report at the beginning or at the end of the tenancy and no photographs of the floor taken before the tenancy began were entered into evidence. The landlord submitted photographs showing that the laminate had been cut away in some places and that in other places it had torn away, revealing tiles and the sub-floor underneath. The tenant and her witness testified that at the time the tenancy began the laminate had already been torn away in several places revealing the sub-floor. The tenant testified that she cut away part of the laminate because the torn area had left jagged edges which hurt her feet. The landlord has the burden of proving that damage was caused to the flooring and that the tenant left the flooring in worse condition than it was at the start of the tenancy. The landlord was obligated to conduct a condition inspection of the rental unit and produce a report, but failed to do so. In the absence of proof of the condition of the unit at the beginning of the tenancy, I am unable to find that the tenant left the flooring in worse condition at the end of the tenancy. I note too that as the flooring was 15 years old, it had already outlived its useful life by 5

years and I am unable to find that the flooring had any actual value. The landlord's claim is dismissed.

- [4] **Parking.** The landlord claims \$900.00 as the cost of storing the tenant's car which the parties agreed was left in the driveway of the rental unit for some 10 weeks after the end of the tenancy. The tenant testified that she left the car in the driveway to prove to the landlord that towing companies would not remove a vehicle without having authorization from the owner. I accept that the tenant left her car in the driveway and find that she had no right to do so and that it caused the landlord some inconvenience. However, I find the landlord's claim for compensation to be exorbitant. I find that \$100.00 will adequately compensate the landlord and I award him that sum.

- [5] **Utilities and deposit.** The landlord claims \$915.78 in unpaid water bills, \$691.42 in unpaid hydro bills and \$200.00 as a hydro deposit. The landlord testified that the tenant was obligated to pay hydro for the rental unit and that she had been making payments and deducting 1/3 of the payments from her rent in compensation for the hydro used by a separate rental unit in the building which share the same meter. The tenant acknowledged that she had made some hydro payments but argued that the agreement that she pay hydro was not put in writing and that she felt it was unfair that the bill was in her name when the bill represented not only her usage but also the usage of the separate rental unit. The landlord provided a copy of a hydro bill showing that \$691.42 was owing as of April 28, 2008. The landlord testified that he paid the hydro bill at that time in order to ensure that the utilities to the home were not cut off. I find that the parties had a verbal agreement that the

tenant would pay for 2/3 of the hydro. Although the agreement should have been put in writing, it is nonetheless binding on the tenant. The tenant had been in the practice of paying for hydro , at least sporadically, throughout the tenancy and deducting 1/3 for the lower tenant's share, which indicates that she was in agreement with paying the remaining 2/3. I am satisfied that the landlord paid the \$691.42 owing as of April 28, 2008 and that the tenant had the benefit not only of the utilities, but also was able to deduct 1/3 of the value of the utilities from her rent up to that period in compensation for the portion used by the tenant on the lower floor. I find that the landlord is entitled to recover the \$691.42 in hydro payments and I award the landlord that sum. The landlord testified that when the tenant put the hydro bill in her name, she deducted \$200.00 from her rent as compensation for part of the deposit she had to pay to BC Hydro. The tenant denied having deducted any amount from her rent for the deposit. I find that the landlord has failed to prove that the tenant deducted money from her rent to pay for the hydro deposit and accordingly dismiss this claim. The landlord testified that the tenant had agreed to pay for water during the tenancy. At some point during the tenancy, the landlord changed the water bill over to the tenant's name. The tenant testified that when she discovered this, she contacted the city and requested that her name be removed from the account immediately, which was done. The tenant denied ever agreeing to pay for water. I find that the landlord has not proven that the tenant had agreed to pay for water and accordingly I dismiss this claim.

- [6] **Filing fee.** The landlord seeks to recover the \$50.00 paid to bring this application. I find that the landlord is entitled to recover the fee and award the landlord \$50.00.

In summary, the landlord has been successful in the following claims:

Junk removal	\$ 100.00
Parking	\$ 100.00
Hydro	\$ 691.42
Filing fee	\$ 50.00
Total:	\$ 941.42

I find that the landlord has established a claim for \$941.42. I order that the landlord retain the deposit and interest (calculated to the date of this judgment) of \$439.15 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$502.27. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order for \$502.27.

Dated August 10, 2009.
