



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, MNDC, ERP, RP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord applied to retain all or part of the security deposit for unpaid utilities. The tenant applied for compensation resulting from a breach of the *Residential Tenancy Act (Act)*.

The hearing was conducted via teleconference with both landlords and the tenant attending.

In the course of the hearing, the tenant identified that she had not received two photographs that the landlord was referring to in his testimony. The landlord confirmed that he had not provided the tenant with these. I informed both parties that I would not be able to consider these two photographs.

Issues(s) to be Decided

The issue to be decided is whether the landlord is entitled to a monetary order for unpaid utilities; for all or part of the security deposit, pursuant to Section 38 of the *Act*.

In addition it must be decided if the tenant is entitled to a monetary order for compensation for the landlord's failure to make emergency repairs; non-completion of a move in condition inspection report; for entering the rental unit without proper notice to the tenant; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 29, 32, 33, 38, 65, and 72 of the *Act*.

Background and Evidence

The tenancy agreement was signed by the parties on May 24, 2009 for a six month fixed term tenancy beginning on June 1, 2009 and ending on December 1, 2009 for a monthly rent of \$1,000.00 due on the 1st of the month. A security deposit of \$500.00 was paid on May 15, 2009. According to the tenancy agreement the tenant was to vacate the rental unit at the end of the fixed term.

The landlord submitted into evidence, the following documents:

- A copy of the tenancy agreement with one page addendum;

- A copy of a two month extension addendum extending the fixed term by two months with the same terms as the original tenancy agreement;
- A copy of a letter from the landlord to the tenant with a settlement offer, dated January 4, 2010;
- Hydro and gas utility bills dating from July 7, 2009 to January 29, 2010; and
- 4 photographs of the rental unit, in particular two photographs of holes in the ceiling; one of holes in a bedroom wall; and one of the carpeting.

The tenant submitted into evidence:

- A summary of claim dated January 12, 2010;
- Receipts for her security deposit and ½ month rent for May 2009;
- Receipts for prescription medications dated September 17, 2009 for a total of \$104.63;
- A copy of a patient discharge medications and instructions sheet dated September 17, 2009, listing medications;
- A receipt for movers dated December 31, 2009 in the amount of \$545.74; and
- A copy of a letter from the tenant to the landlord dated December 29, 2009 providing her two day notice that she would be vacating the rental unit.

The landlord has made a claim against the security deposit for \$430.00 for utilities owed.

The total claim of the tenant on her application was in the amount of \$6212.00 and she amended this application during the hearing by \$308.45 for additional missed work for this hearing; costs of providing evidence for this hearing; and for an overcharge of utilities paid in May and June of 2009.

The compensation the tenant is claiming is outlined in the following table

Description	Amount
Missed worked - 4 days @ \$184.00 per day	\$736.00
Prescription medication for child	\$120.00
Damaged sofa	\$500.00
Moving Expenses	\$540.00
Damage Deposit	\$500.00
Costs of providing evidence	\$91.33
Overcharges for utilities	\$33.12
Rent refund	\$4000.00
Total	\$6520.45

The landlord testified that although the tenancy agreement did not address the utilities issue, the parties had an agreement where the tenant would pay 50% of the utilities from the beginning of the tenancy and that the tenant paid for May and June 2009 but did not pay anything further. The tenant did not dispute these statements.

The tenant testified that because of a flood coming from the landlord's main floor on August 31, 2009, the landlord had agreed to no longer hold the tenant responsible for utilities. The landlord testified that they had agreed to not charge the tenant for the month of September 2009 only. The landlord stated that offer was rescinded when the tenant failed to pay any utilities.

The tenant testified that on August 31, 2009 she awoke to see water coming through the ceiling fan in her living room. She contacted the landlord and between the two the water was shut off and holes were put in the ceiling to help drain any standing water. The landlord testified that he also placed a fan in the crawl space between the floors to help facilitate drying the area.

The tenant further states that as a result of the flood she missed a day's work and when her child was hospitalized with respiratory problems in September, 2009 she had to miss two more days' work. The tenant is contending that the flood and a previous water problem in the rental unit contributed to the hospitalization of her child.

The tenant further testified that the child required prescription medication and that her sofa was damaged. She stated she has not replaced the sofa. The tenant states in her written submission that an asthma tech at the hospital suggested the child may be exposed to high humidity or mould.

The tenant testified that the landlord refused to check for the presence of mould and suggested that if the tenant was concerned she could move out any time. As a result the tenant has claimed for moving expenses.

The tenant testified that on December 6, 2009 the landlord entered the rental unit to gain access to a storage area without proper 24 hour notice. The landlord acknowledged the entry and the fact that proper notice was not given.

Analysis

I find the tenant has failed to provide any evidence supporting her claim the landlord breached the *Act* by failing to make any emergency repairs.

I do accept, by the landlord's own testimony, that the landlord did enter the rental unit without adequate notice as required in Section 29 of the *Act*. However, I find the incident was of such minor significance and the tenant suffered no loss or damage because of it.

The tenant had entered a 6 month fixed term tenancy scheduled to end on December 1, 2009 and had initialled the section acknowledging that at the end of the tenancy she would have to vacate the premises. The landlord's did agree in late November when the tenant indicated she had not found alternate accommodations to a 2 month extension.

As the tenant entered into an agreement that had a definite end, she had or should have had an expectation that she would have to move at the end of the tenancy, as such I dismiss her claim for moving expenses.

The tenant has not replaced the sofa that she is claiming for and has therefore not suffered any damage or loss. If the couch is beyond repair, the tenant has failed to provide sufficient evidence of this. I dismiss the tenant's claim for compensation for the couch.

The tenant has failed to provide sufficient evidence linking any medical problems to any causes that the landlord could be held responsible for, as such I dismiss the tenant's claim for lost work due to the hospitalization and for medication of her child.

As the tenant chose to have her fixed term tenancy extended by 2 months, instead of leaving at the earliest possible time, I am not convinced that she felt that her children were being subjected to any health or safety hazards and as such, I dismiss her claim for the return of 4 months worth of rent.

In relation to the security deposit and utility charges, I find the tenant is responsible for the unpaid utilities. I am persuaded by the tenant that the landlord should have been using the actual usage charges up to the end of the tenancy. From the bills submitted by the landlord the following table outlines the total charges:

Hydro Period (2009) Ending		Gas Period (2009) Ending		Amount
August 7	\$60.92	August 6	\$45.74	\$106.66
September 4	\$109.40	September 4	\$40.20	\$149.60
October 7	\$57.36	October 6	\$47.29	\$104.65
November 5	\$120.40	November 5	\$102.66	\$223.06
December 8	\$90.02	December 7	\$79.00	\$169.02
January 7 (2010)	\$121.64	January 7 (2010)	\$206.41	\$328.05
Totals	\$559.74		\$521.30	\$1081.04

As the total utility charges, based on the submitted bills for the tenancy period, is \$1081.04. I therefore find the tenant would have been responsible for \$540.52. I find the landlord has provided sufficient evidence to show entitlement to the \$423.00 in his application.

While the landlord admits that a Condition Inspection Report was not completed at move in or at move out, in compliance with Sections 23 and 35 of the *Act*, I find the landlord has extinguished their right to claim against the security deposit I find that pursuant to Section 72 (2)(2)(b) the landlord can deduct the utilities owed by the tenant from the security deposit.

As the tenant has been unsuccessful in her application, I dismiss her request for recovery of the filing fee for this hearing.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$423.00** comprised of utilities owed.

I order the landlord may deduct from the security deposit held in the amount of \$325.00 in full satisfaction of this claim. I grant a monetary order in the amount of **\$77.00** for the balance of the security deposit to be paid to the tenant.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: February 16, 2010.

Dispute Resolution Officer