

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by each party.

The Tenant filed his Application to request a return of double the security deposit paid to the Landlord and to recover the filing fee for the Application.

The Landlord filed his Application to request monetary orders for damages to the rental unit, for compensation for losses under the Act or tenancy agreement, for unpaid rent or utilities, to keep all or part of the security deposit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Tenant entitled to the return of double his security deposit?

Is the Landlord entitled to compensation from the Tenant?

Background and Evidence

The parties entered into a written tenancy agreement on July 14, 2008, with the parties agreeing to a monthly rent of \$1,600.00, payable on the first day of the month. The Tenant paid the Landlord a security deposit of \$800.00 on July 14, 2008.

The Tenant testified that on September 1, 2009, he gave the Landlord's son a notice informing the Landlord that the Tenant wanted to end the tenancy on September 30, 2009. The Landlord alleges he did not receive the notice until September 5, 2009.

The Landlord alleges the Tenant did not provide him with the time and date the Tenant was vacating the rental unit. He says that it was difficult to communicate with the Tenant to arrange a time for the outgoing condition inspection report, therefore, no outgoing condition inspection report was performed.

The Landlord alleges the Tenant left the rental unit without paying his share of the utility bills in the amount of \$338.14. The Landlord is also claiming for having to clean the rental unit after the Tenant left at a cost of \$150.00, for cleaning the stove \$45.00, for carpet cleaning in the amount of \$180.08, for removal of the rubbish left behind by the Tenant in the amount of \$25.00, for repairing two kitchen drawers in the amount of \$100.00, for the cost of an electrician to turn on a breaker for the washing machine in the amount of \$36.75, and for one month of rent for failing to give notice as required under the Act and tenancy agreement. The Landlord testified he had re-rented the unit for November 1, 2009.

In regard to the outstanding utility costs, the Landlord testified that the Tenant was splitting these costs on a 50 - 50 basis with another occupant in a different rental unit at the property where the subject rental unit is located. The Tenant testified there was no agreement to pay these bills and he, "... had not studied this yet." I note the written tenancy agreement requires the Tenant to pay the utilities as they are not included in the rent.

The Tenant is requesting return of double his security deposit, pursuant to section 38 of the Act. The Tenant received from the Landlord a partial return of his security deposit in December of 2009, in the amount of \$113.73. The Landlord testified he had sent out the deposit cheque in October of 2009, however, it was sent to the wrong address. The cheque the Landlord issued to the Tenant is dated October 19, 2009.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant is entitled to the return of double his security deposit, plus the interest on the original amount paid. Under section 38 of the Act, the Landlord is required to return the security deposit and interest to the Tenant within 15 days of the end of the tenancy or receipt of the Tenant's forwarding address, or he must file an Application for Dispute Resolution to keep the security deposit and interest. In this situation, the Landlord also did not have a written agreement with the Tenant to make deductions from the deposit

and interest. The Landlord dated the cheque on October 19, 2009, and did not deliver it to the Tenant until December of 2009, well beyond the 15 day period described above.

Therefore, I find the Landlord did not return the security deposit and interest to the Tenant in accordance with the Act and I must order the Landlord to pay the Tenant double the security deposit. Subject to the set off described below, I order the Landlord to pay the Tenant the sum of **\$1,541.88**, comprised of double the security deposit (2 x \$800.00), the interest on the original amount held \$5.61 and \$50.00 for the filing fee for the Application, less the \$113.73 the Landlord returned to the Tenant in December of 2009.

In regard to the claims of the Landlord, I find that the Tenant breached the Act and tenancy agreement by failing to give the Landlord the notice to end required. Under section 45 of the Act, if the Tenant wanted to end the tenancy on September 30, 2009, he should have given the Landlord his notice no later than August 31, 2009. Therefore, the Tenant owes the Landlord \$1,600.00 for one month of rent.

I also find the Tenant failed to pay utilities to the Landlord. I accept the evidence of the Landlord regarding the arrangement to pay utilities on a 50 – 50 basis with the occupant in the other rental unit at the property. I found the Tenant's testimony on this issue to be evasive. Therefore, the Tenant owes the Landlord \$338.14 for the utilities.

The Tenant was also required to have the carpets cleaned at the end of the tenancy. He did not do this and I order him to pay the Landlord \$180.08 for this. I also allow the Landlord \$36.75 for the electrician to reset the breaker on the wash machine, as this is something the Tenant should have checked, prior to informing the LI the machine was broken.

I find the Landlord had insufficient evidence, such as invoices or photographs of the unit, to prove his claims for cleaning the unit or stove, or for repairing the drawers, or for removing rubbish from the unit, and this portion of the claim is dismissed.

Therefore, I find that the Landlord has established a total monetary claim of **\$2,204.97** comprised of the above described amounts and the \$50.00 fee paid by the Landlord for this application.

As the Landlord is owed \$2,204.97 from the Tenant, and the Tenant is owed \$1,541.88 from the Landlord, I set off these amounts against each other, and I grant the Landlord an order under section 67 for the balance due of **\$663.09**. This order 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: April 22, 2010.

Dispute Resolution Officer