

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for a monetary order. The tenant has applied for a monetary order.

The hearing was conducted via teleconference and was attended by both the landlord and the tenant.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition, it must be decided if the tenant is entitled to a monetary order for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted the following documentary evidence:

- A copy of a tenancy agreement signed by the parties on August 5, 2008 for a 1 year fixed term tenancy beginning on September 1, 2008 that converted to a month to month tenancy on September 1, 2009 for a monthly rent of \$1,325.00 per month with the tenant responsible for ½ of the utilities, and a security deposit of \$662.50 was paid on August 5, 2008;
- A copy of a letter to the tenant outlining the amount due for utilities and suggesting the landlord retain a corresponding amount for the security deposit;
- A copy of utility bills for hydro, water, and heating oil;
- A copy of the tenant's notice to end the tenancy, in the form of an email from the tenant to the landlord dated January 28, 2010 stating she has found "another suite for March the 1st";
- A copy of a handwritten "follow up" note from the tenant to the landlord providing the tenant's new address and noting she will be vacating at the end of February;
- A copy of a Notice of Final Opportunity to Schedule a Condition Inspection for an inspection date of February 28, 2010, noting it was hand delivered on February 11, 2010;
- A copy of a Condition Inspection Report completed on March 1, 2010 signed by the landlord but not by the tenant; and

- Correspondence between the landlord and tenant relating to the issues from December 1, 2009 to February 11, 2010;

The tenant has submitted the following documents as evidence:

- A seven page summary of the issues;
- A receipt from a big box store dated September 19, 2009 in the amount of \$946.38;
- Applications for rebates for the purchase of a washing machine;
- Correspondence between the tenant and the landlord dating from between July 21, 2009 and March 2, 2010;
- Printed web page information from Fortis BC dated October 2008 and BC Stats dated December 2008 regarding the average cost to heat a home in BC;
- Copies of heating oil fuel invoices for the duration of the tenancy;
- A copy of a storage rental agreements for the tenant for storage pick up and moving from February 18, 2010 to February 27, 2010 and March 27, 2010 and April 3, 2010 in the amount of \$104.96 and \$68.25;
- A copy of a receipts from a moving company for moving items into storage on February 27, 2010 in the amount of \$294.00 and April 1, 2010 in the amount of \$294.00;
- A receipt for repairs to the bathroom in both rental units dated September 8, 2009 in the amount of \$5,607.00;
- An MLS listing for the sale of a house at different address (the landlord's address);
- A receipt for copying charges;
- 43 photographs of the condition of the rental unit, residential property and renovation of the bathroom; and
- A copy of a tenancy agreement signed by the parties on August 5, 2008 for a 1 year fixed term tenancy beginning on September 1, 2008 that converted to a month to month tenancy on September 1, 2009 for a monthly rent of \$1,325.00 per month with the tenant responsible for ½ of the utilities, and a security deposit of \$662.50 was paid on August 5, 2008;

In the hearing the parties agreed to the landlord's claim for hydro and utilities (water) in the amount of \$262.96. The tenant disputes the amount for heating oil. The landlord had originally claimed \$377.02 for heating oil but amended her application prior to the hearing to reduce that by \$211.93 to a total of \$165.09.

The tenant testified that she felt there was something wrong with the amount she had paid for heating over the course of the tenancy and she researched and determine the average cost for home energy in BC should be \$1700.00 and that heating should account for ½ of that amount or \$850.00 per year. The tenant felt there was something wrong with the furnace or that someone was stealing oil from the tank.

The landlord testified that they had completed service work and one off service calls on the furnace before and throughout the tenancy and that they had added insulation to the roof during the tenancy.

The tenant testified that the landlords moved into the rental unit at the end of the tenancy and that she should be compensated for 1 month's rent or her moving costs as a result of her moving and that it had been the landlord's intention all along to force the tenant to submit her notice to end the tenancy so the landlord could move in.

The tenant is also claiming cleaning costs for cleaning a common area between the rental units in the residential property and for costs associated with photocopying for this hearing.

The tenant claimed the landlord had never provided her with a rebate received from the local regional district for replacement of a washing machine in the amount of \$100.00. The landlord noted that she had received this on April 2, 2010 and was willing to provide to the tenant as per their agreement.

At the end of the hearing the tenant raised this issue of a chain link fence left on the property at the end of the tenancy and requested \$100.00 for it. The landlord stated she did not want the chain link fence.

The parties agreed that the landlord would put the chain link fence on the curb by 8:00 a.m. on Saturday, May 15, 2010 and the tenant would pick it up no later than 5:00 p.m. on Saturday, May 15, 2010.

Analysis

Section 45 of the *Act* allows a tenant to end a month to month tenancy by providing the landlord with written notice to end the tenancy before the day rent is due in the rental period. The tenant provided the landlord with such a notice.

What the landlord chooses to do with a rental unit once a tenant gives notice to end a tenancy is up to the landlord and the tenant has no claim for compensation or loss under the *Act*, despite the tenant's assertion that the landlord force her to submit her notice by their actions during the tenancy. I dismiss the tenant's claim for compensation for moving and storage expenses or for compensation of 1 month's rent.

In relation to the tenant's claim to an overpayment of heating oil during the tenancy, the tenancy agreement states the tenant is responsible for ½ the utilities. The agreement does not stipulate that utility charges be in line with information on a website showing the average cost.

Even if I could consider this information the tenant has failed to show how the rental unit met the same criteria used by Fortis or BC Stats to make their determinations. She has

also failed to show how it was incumbent upon the landlord to increase the heating efficiency in the rental unit under the *Act*.

The tenant also failed to provide evidence that required her to clean the common areas that she is seeking compensation for. As a result, I dismiss the tenant's application in its entirety, without leave to reapply.

In addition to the agreed upon amount for utilities on the landlord's application, I find the tenant is also responsible for the \$165.09 for heating oil, for a total amount owed to the landlord of \$428.05 for unpaid utilities.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$378.05** comprised of \$119.41 for hydro; \$143.55 for water utilities; \$165.09 for heating oil and the \$50.00 fee paid by the landlord for this application less the \$100.00 rebate owed to the tenant.

I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$666.55 in satisfaction of this claim and return the balance of \$288.50 to the tenant.

I grant a monetary order in the amount of **\$288.50**. 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: May 14, 2010.

Dispute Resolution Officer