DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order.

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

The tenant's original application was for compensation in the amount of $1,569.00 but when his evidence was submitted the tenant, in a summary of issues, changed that amount to $3,261.62. As the landlord had addressed some of the issues in his written evidence that warranted the increase in the claim, I accept the tenant's amendment.

The tenant testified that he served the landlord evidence personally to the landlord's son at the service address provided by the landlord and witnessed by his wife and by registered mail to the return address that was on the landlord's evidence.

The landlord testified that he is currently in Malaysia and his son has not indicated receipt of any evidence packages and he does not know the address the tenants cited. The landlord provided his son's phone number for me to attempt to contact the son to discuss. There was no answer at the number provided.

As the landlord is out of the country and the address in question was provided by the landlord, I accept the tenant's evidence has been sufficiently served for the purposes of this hearing, in accordance with Section 71(2)(b) of the *Residential Tenancy Act (Act)*.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for heating oil; for all or part of the security deposit; for compensation resulting from the landlord's failure to use the rental unit for the stated purpose in the notice to end tenancy; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 51, 67, and 72 of the *Act.*

Background and Evidence

The tenancy began on March 1, 2001 as a month to month tenancy for a current monthly rent that is disputed by the parties but a security deposit was paid in the amount of $550.00 on March 1, 2001. The tenancy ended on October 31, 2009. Both

parties agree the tenant was compensation for the equivalent of one month's rent resulting from the landlord's notice to end tenancy for personal use.

The tenant submitted the following documents into evidence:

- A summary of issues;
- A copy of a completed move in inspection completed on February 28, 2001;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property on August 22, 2009 with an effective vacancy date of October 31, 2009, citing the property will be occupied by the landlord or a close family member;
- A copy of a Notice of Rent Increase dated May 26, 2008 showing a rent increase effective September 1, 2008;
- Several emails between the parties dating from June 27, 2009 to November 30, 2009 relating to some of the issues under dispute;
- A copy of a bank statement confirming receipt of a hydro rebate from the landlord on February 16, 2009 for the calendar year of 2008;
- A copy of a bank statement confirming rent payment on September 4, 2009 for the month of September 2009;
- A copy of the hydro account statement in the tenant's name with a handwritten 40% calculation representing the annual rebate from the landlord for 2009; and
- 10 photographs of the residential property and rental unit.

The landlord has submitted the following documents:

- A summary of issues;
- Several emails between the parties dating from June 27, 2009 to November 17, 2009 relating to some of the issues under dispute;
- A copy of the hydro account statement in the tenant's name with a handwritten 40% calculation representing the annual rebate from the landlord for 2009;
- A tenant account ledger;
- A copy of a completed move in inspection completed on February 28, 2001 with a handwritten notation at the top of the page indicating the oil tank had been dipped on February 28, 2001 with over 500 litres;
- A copy of a heating oil invoice for refilling the oil tank on November 9, 2009 with over 1154 litres;
- A copy of an owner's statement dated June 2003 showing rent in the amount of $1095.00 for this tenant at this address; and
- 27 photographs of the rental unit.

The landlord and tenant confirmed that there was no written tenancy agreement; no written agreement regarding the hydro rebate; and no written agreement regarding the rent reduction applied to the tenancy from October of 2005.

The tenant testified that they had not provided the landlord with their forwarding address in writing and the landlord confirmed that he had not had the tenant's forwarding address until he received a copy of the tenant's Application for Dispute Resolution.

The landlord also confirmed in his testimony that he did not file an Application for Dispute Resolution to retain the security deposit because originally the tenant had agreed to its retention.

In the hearing both parties reviewed the emails dated November 16, 2009 from the landlord and the tenant's response of November 17, 2009 and based on those emails both parties agreed that there was no written agreement for the landlord to retain the security deposit.

The tenant testified that he had made an agreement with the property management company representing the landlord that if he put the hydro account in his name that each year he would received a 40% rebate for the hydro usage of the cottage that was not part of his tenancy.

The landlord testified that since the tenant did not use oil to heat the house and relied on electric heaters that he breached the agreement and should not be entitled to the rebate. The tenant contests that this was part of the agreement he had reached with the property management company.

The landlord claimed the tenant should have topped up the oil tank at the end of the tenancy or least left it as full as he received it. The tenant testified that when they moved in the tank was empty because he remembers having to have the furnace restarted when they received oil. The landlord contends the level was noted on the inspection report.

The landlord testified the rent had been reduced in 2005 by $265.00 in consideration for the tenant to maintain the house in good condition. The tenant contends that this arrangement was reached in recognition of the tenant completing various repairs.

The landlord testified that he then met with the tenant in June 2009 to advise that since he wasn't fulfilling his end of the agreement the rent would return to $1095, effective August, 2009. The tenant did not pay this additional amount for the months of August or September 2009.

The landlord also provided testimony to the condition of the rental unit at the time of the end of the tenancy and contends he should not have to return the tenant's security deposit.

The landlord confirmed in his written evidence and in his testimony that he had given notice to end the tenancy because he planned to move back into the property himself but that he had to leave the country again so he has re-rented the rental unit to a non-family member, effective January, 2010.

Analysis

Section 38 of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, return the tenant's security deposit or file an Application for Dispute Resolution to claim against the security deposit.

While the tenant confirms that he did not provide the forwarding address to the landlord, the landlord confirmed that he received the forwarding address when he was served with the notice of this hearing from the tenant's Application submitted on December 22, 2009. As the landlord has not filed an Application to claim against the security deposit, I find the tenant is entitled to return of the security deposit and interest held.

In relation to the hydro rebate that is based on a verbal agreement between the tenant and the landlord's agent, I find that where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

As such, because I have no ability to ascertain the component parts of the hydro rebate agreement, I find the landlord cannot unilaterally cancel a verbal contract and that the tenant is entitled to the amount of the rebate calculated by the parties.

Section 51 of the Act states that in the event that a landlord ends a tenancy under Section 49 because the landlord or a close family member intents to reside in the property and the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is equivalent to double the monthly rent payable.

Based on the landlord's written submission and verbal testimony, I find the landlord has not used the rental unit for the stated purpose for at least 6 months and therefore must pay the tenant double the amount of the rent.

As noted above the amount of rent at the end of the tenancy is disputed by both parties I am making no findings on this issue but I will use the only documented evidence I have regarding the amount of rent to determine the value of the compensation granted under Section 51.

The documentation noted is the Notice of Rent dated May 26, 2008 submitted by the tenant with rent amount of $829.00 effective on September 1, 2008. The total amount of this compensation is $1,658.00

As noted above, many issues were discussed during the hearing that are not a part of this decision including: the amount of rent for the final months of the tenancy; damages

to the rental unit; or responsibility for filling the heating oil tanks. On these matters I make no findings and note the landlord is at liberty to file an Application for Dispute Resolution regarding them.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$3,248.42** comprised of $583.80 security deposit and interest held; $956.62 hydro rebate owed; $1,658.00 Section 51 compensation and the $50.00 fee paid by the tenant for this application.

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 27, 2010.

Dispute Resolution Officer