

DECISION

Dispute Codes

MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain an a Monetary Order for money owed or compensation for loss or damage under the Residential Tenancy Act(Act), regulations or tenancy agreement, for the return of his security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, given in person to the landlord on March 08, 2010. The tenant gave sworn testimony that service took place as stated. The landlord is deemed to be served the hearing documents this day.

The tenant appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for loss or damage?
- Is the tenant entitled to recover his security deposit?

Background and Evidence

This month to month tenancy started on January 15, 2010 although the tenant did not take possession until February 04, 2010. Rent for this unit was \$550.00 per month and was due on the first of each month. The tenant paid a security deposit of \$275.00 on December 31, 2009.

The tenant testifies that this was a loft unit attached to a house occupied by the landlord and other female tenants. The tenant states the landlord told him that she would rather have a female renting the unit than a male tenant. On February 16, 2010 the tenant states the landlord

served him with a Two Month Notice to End Tenancy for landlords' use of the property. The tenant moved from the rental unit on March 06, 2010 due to this notice and claimed his last month's rent for March, 2010 as his compensation for the Notice. The tenant states on March 03, 2010 the landlord served him with a 10 day Notice for unpaid rent. The tenant did not dispute either notice as he has moved out. The tenant claims the rent for March would have been his free month rent in compensation for the two month notice.

The tenant testifies that he had an agreement with the landlord and has provided copies of this agreement, that the loft shall be supplied with a fridge and stove. Laundry facilities will be shared and cabinets above the kitchen sink will be provided.

The tenant testifies that he moved into the rental unit on February 04, 2010 and on February 22, 2010 the landlord refused him access to the laundry facilities and locked the door. The tenant testifies, and has provided photographs of the kitchen, that the landlord did not provide a stove for his unit throughout the tenancy. The fridge was fitted sometime around the middle of February and the tenant had to hang the kitchen cupboards himself. The tenant also claims the landlord turned off the gas to his unit on February 15 and he was three weeks without heat during the winter months.

The tenant claims he cares for his young child on a part time basis and was unable to cook or heat the unit. The tenant states he did have a hotplate but was unable to cook on it as it kicked off the breakers and as these were in the landlords' house he could not get in to reset them. The tenant seeks compensation of rent for January of \$275.00 all his rent for February and March of \$1,100.00.

The tenant also seeks \$200.00 for his moving costs for having to move from the rental unit due to the level of animosity against him because he was a male tenant.

The tenant states the landlord has not used his unit for the reason given on the Two Month Notice and has simply moved a female tenant who is not related to the landlord into his unit. The tenant seeks to amend his application for compensation due to this for two months' rent.

Analysis

The landlord did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord I find the tenancy agreement in place between the landlord and tenant states that the loft shall be supplied with a fridge and stove. Laundry facilities will be shared and cabinets above the kitchen sink will be provided. From the tenants evidence it is evident that the landlord has not provided the tenant with a stove throughout the length of his tenancy. The landlord has not disputed any other aspects of the tenants claim that she did not provide the tenant with a fridge until the middle of February, 2010, the laundry room door was locked thus preventing the tenants' access to these facilities and the gas was turned off on February 15, 2010. Section 27 of the Act states:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

Consequently it is my decision that the landlord did not provide some of the appliances named on the agreement in a timely manner and terminated facilities that were essential to the tenants' use of the rental unit as living accommodation and has breached section 27 of the Act.

Section 67 of the *Residential Tenancy Act* states: Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. The tenant seeks to recover the rent paid for January, February and March. I found this amount to be excessive as the tenant did have some use of the rental unit during this time and he did not loss all the facilities for the entire period of his tenancy. Consequently I find the tenant is entitled to a monetary award of **\$800.00**.

The tenant seeks the sum of \$200.00 for his moving costs. I find the tenant is not entitled to this sum as the compensation for the two months notice, equivalent to the last month's rent, is compensation to help a tenant move. Therefore, this section of the tenants claim is dismissed.

The tenant seeks the return of his security deposit of \$272.00. The tenant states that he does not recall giving the landlord his forwarding address in writing. Section 38 of the *Act* states the landlord must return the tenants security deposit or make an application to keep it within 15 days of receiving the tenants forwarding address in writing. As this address was not given to the landlord until the tenant served the landlord with notice of this hearing it is my decision that the 15 days the landlord has to return the security deposit or file an application to keep it starts from the date of the hearing of June 23, 2010 as the tenant stated on this day that the address on his application is his forwarding address. Therefore, the landlord has until July 08, 2010 to comply with section 38 of the *Act*.

As the tenant has been partial successful he is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount:

Compensation for loss of facilities	\$800.00
Total amount due to the tenant	\$850.00

The tenant seeks to amend his application to deal with the matter of compensation because the landlord has not fulfilled the reason given on the two month notice and has moved an unrelated person into the rental unit. However the tenant did not apply to amend his application to include this additional Monetary Amount and as the landlord has not had prior knowledge of this I find it would prejudice the respondent if I dealt with this matter at this hearing. Therefore, the tenant is not at liberty to amend his application but is at liberty to file a new application with regards to this matter.

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$850.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I FURTHER ORDER the landlord to return the tenants security deposit or deal with it in accordance with the *Act* by July 08, 2010.

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: June 25, 2010.

Dispute Resolution Officer