

DECISION

Dispute Codes

For the tenant – MNDC, MNSD, OLC, FF

For the landlord – MND, MNR, MNSD, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The tenant seeks the return of double the security deposit, an Order for the landlord to comply with the Act and the recovery of the filing fee paid for this application. The landlord seeks a Monetary Order for unpaid rent, for damages to the rental unit and for money owed or compensation for damage or loss under the *Act*. The landlord also seeks to keep the security deposit and recover the filing fee paid for this application.

The tenant served the landlord by registered mail on February 12 and on March 25, 2010 with a copy of the application and a Notice of the Hearing and an amended copy of the application. The landlord served the tenant in person on February 27, 2010 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The first hearing was reconvened to allow the landlord to reserve the tenant with her evidence as the tenant claimed she had not received it. The hearing was reconvened and the evidence for the tenants' application was heard. As there was insufficient time to hear the landlords' evidence for her application the hearing was reconvened again to conclude the hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
 - Is the tenant entitled to the return of double her security deposit?
 - Is the tenant entitled to an Order for the landlord to comply with the Act?
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- Is the landlord entitled to a Monetary Order for unpaid rent?
 - Is the landlord entitled to a Monetary Order for damages to the rental unit?
 - Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
 - Is the landlord entitled to keep the security deposit?

Background and Evidence

Both Parties agree that this tenancy started on November 28, 2009. This was a fixed term tenancy for three months and the effective expiry date was February 28, 2010. The rent for this unit was \$850.00 per month and the tenancy agreement addendum states that this is due on the last day of each month. The tenants paid a security deposit of \$425.00 on November 07, 2009. The landlord did not complete a Move in condition inspection report. A Move out condition inspection report was completed. The tenants gave the landlord their forwarding address on February 27, 2010.

The tenants' application

The tenant testifies that the tenancy agreement states that laundry facilities were included in the rent. She claims that when she viewed the unit there was a washer and dryer, however when she moved into the unit she found that the dryer did not work. The tenant has included e-mails sent to the landlord asking for the dryer to be repaired and states that the landlord refused to carry out repairs and told the tenant that the dryer was not included in the tenancy agreement.

The tenant seeks \$150.00 in compensation for the loss of this facility which she claims was included in the tenancy agreement.

The tenant seeks compensation for a portion of her share of a gas bill which she paid. The tenant claims that she shared the gas bill with the tenants living downstairs. The tenant claims that this tenant had a broken window which was covered in cardboard and which the landlord refused to repair for the three months of her tenancy. The tenant claims that due to this broken window the tenants incurred higher than normal gas charges as the downstairs unit would have suffered from heat loss from this broken window. The tenant states she paid \$220.00 for her share of this bill during the winter months and seeks to recover one third of this amount back to the sum of \$73.00 from the landlord as she failed to make the repairs.

The tenant seeks compensation for a loss of quiet enjoyment of her rental unit. The tenant claims her smoke alarm kept going off, she requested the landlord to fix the problem at the end of January but the landlord refused. The tenant also claims the landlord harassed them for additional rent money which they did not owe; she was aggressive and used foul language. The tenant claims the landlord threatened to tell the police that the tenants' husband confided her for several minutes if she did not withdraw her application. The tenant claims the landlord violated their right to peace and quiet enjoyment as she was aggressive, exhibited unreasonable actions, intimidating behaviour and used threatening language. The tenant seeks the sum of \$800.00 in compensation for her and her family's loss of quiet enjoyment of the rental unit.

The tenant seeks double the return of the security deposit as the landlord has not returned it within 15 days of the end of the tenancy or the date the tenants gave the landlord her forwarding address in writing. The tenant claims the landlord filed her application to keep the security deposit on February 23, 2010 which was four days before the move out condition inspection and five days before the end of the tenancy. The tenant states that she believes the landlord had no intention of returning the security deposit to them. The tenant seeks \$850.00 (425.00×2) for the deposit. The tenants also claim that the landlord did not conduct a move in condition inspection at the start of the tenancy and they were not given any opportunity to attend an inspection at that time. Due to this the tenant claims the landlord is not entitled to keep the security deposit.

The tenants seek an order for the landlord to comply with the *Act* by giving them a correctly dated rent receipt for February, 2010. The tenants claim the tenancy agreement was for a fixed period of three months starting on November 28, 2009 and ending on February 28, 2010. The tenant claims the landlord collected the first month's rent on November 28, 2009 and gave them a receipt to show that this rent was for the period of November 28, 2009 to December 27, 2009. On December 25, 2009 the tenant claims the landlord came and asked them for additional rent for November 28, 29 and 30, 2009. The tenant explained that they had already paid this amount to the landlord and had been given a receipt. On December 27, 2009 the landlord collected rent payments again and gave the tenants a rent receipt for rent paid from December 28, 2009 to January 27, 2010. On January 27, 2010 the landlord again called to collect rent. The tenant states she paid \$850.00 and this time the landlord gave her a receipt which stated that this rent was for January 28, 2010 to February 25, 2010. The tenant asked the landlord to amend this receipt to show rent had been paid up to February 28, 2010 but the landlord refused and continually harassed the tenants for three more days rent. The tenants argue that all rent has been paid according to the tenancy agreement.

The landlord disputes the tenants claim. The landlord testifies that the tenant did not notify her at the start of the tenancy that the dryer was not working and should have asked her to repair it. The landlord states that the dryer was not part of the tenancy agreement and only the washing machine was included in the agreement.

The landlord states that the family downstairs broke the window in their unit. They sealed the hole with two pieces of cardboard. The landlord claims that after several days the insurance company came to fix the window and because the window was sealed with tape and card it would not leak heat.

The landlord claims that when she showed prospective tenants the unit to attempt to re-rent it at the end of the tenancy the tenants videoed her and the prospective tenants and were aggressive towards her. This put prospective tenants off and she has not been able to re-rent the unit for March, 2010.

The landlord disputes the tenants claim that the smoke alarm kept going off. The landlord claims the smoke alarms were newly installed when she bought the house and would still be in good

condition. The landlord has provided a letter from the neighbouring tenants who claim they have heard the smoke alarm go off on one occasion.

The landlord states she has not returned the tenants security deposit as she is waiting for the outcome of this hearing.

The landlord claims that she has complied with the Act and tenancy agreement. The landlord claims the tenancy agreement shows that the tenants owe three days rent for November, 2009 and that the tenancy agreement was for three months and three days.

The landlords' application

The landlord seeks the unpaid rent of \$85.00 for three days in November, 2009 as detailed above.

The landlord seeks a loss of rental income for March, 2010 of \$850.00 as she claims she was unable to re-rent the unit again at the end of the tenancy because the tenants put off prospective tenants by being aggressive and by videoing them without their consent and making remarks about the landlord.

The landlord testifies that the tenants owe \$170.98 in unpaid utility bills. The landlord claims the amount of the utility bills is \$119.26 for gas and \$51.72 for electricity. The tenants' share of the gas bill is 50% and the tenants' share of electricity is worked out on a head count between the two units.

The landlord claims the tenant broke a bed frame which was discovered after the end of the tenancy. The landlord seeks \$126.00 to replace this. The landlord also claims the tenant did not clean the rental unit properly at the end of the tenancy and the carpets had not been cleaned. The landlord testifies that she has incurred cleaning costs of \$80.00.

The tenant disputes the landlords' testimony. The tenant states she does not owe three days rent as explained above. The tenant claims she does not owe rent for March and the tenancy ended at the end of the fixed term. The tenant gave the landlord one months notice in January 2010 that they would be vacating the rental unit at the end of February, 2010. The tenant disputes that they were aggressive to the landlord when she showed prospective tenants

around the unit and claims they were videoing the move out condition inspection not prospective tenants on the day in question.

The tenants dispute the amount of utilities owed by them. The tenant claims that she paid \$82.00 in February 2010 for the January gas bill and asked the landlord to show her a copy of the bill but she did not receive copies until May 14, 2010. The tenant claims that in the tenancy agreement it states that unit B should pay fifty percent of the gas bill during heating season. From January 05 to February 27 (54 days) Prorated the bill should be \$111.03 for January and February, 2010 (bill total \$238.51, 50% of total \$111.03). The tenant claims \$82.00 was already paid to the landlord for this bill so therefore the total amount owed by the tenants is \$29.03.

The tenant claims the landlords' calculations for the BC Hydro bill are also incorrect and is based on the number of people living in each unit, therefore the tenant calculates that the amount owed by them is \$34.08. The tenant has calculated this by the daily rate for Hydro of \$1.45 and the head counts for each unit. The tenant claims that from January 06 to 11, 2010 she had five head counts and the other tenant was joined by her husband so had four head counts therefore her portion of the bill is 56% for January to a sum of \$4.87 . From January 12 to February 27, 2010 the tenant claims she had three headcounts and the other tenant had four head counts, therefore her portion of the bill for this period is 43% to a sum of \$29.24. The tenant claims her total portion of Hydro used is \$34.08. The tenant argues that this means the landlords claim for \$170.00 for utility bills is false and in fact the tenant owes the sum of \$63.11.

The tenants claim they did not break the bed frame. This was not mentioned on the move out condition inspection form. The tenants state that they have no way of knowing how this was broken as it was intact at the end of their tenancy. The tenant states she did clean the unit at the end of the tenancy. The unit was more than 30 years old and was not cleaned properly when her and her family took over as tenants. The tenant claims the carpet was already stained at the start of the tenancy, she claims she asked the landlord to deal with this and she told them the previous tenants had caused the stains. The tenant has provided e-mail correspondence concerning the carpet stains in evidence. The tenant states that no further staining occurred during her tenancy and the carpets were vacuumed at the end of the tenancy.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for the sum of \$150.00 for the loss of the dryer facility in the laundry; I find the tenancy agreement states laundry facilities and it would be reasonable for the tenant to assume that this included the dryer as it was in place at the start of the tenancy and she would have had no knowledge at that time that it did not work. A landlord must not terminate or restrict a service or facility pursuant to section 27 of the *Act*. Consequently, I find in favor of the tenants claim for compensation for the loss of this facility for three months to the sum of **\$150.00** pursuant to section 67 of the *Act*.

With regard to the tenants claim for the return of double the security deposit; section 38(1) of the *Act* states: within 15 days after the later of a) the tenancy ends or b) the date the landlord receives the tenants forwarding address in writing the landlord must do one of the following c) repay any security deposit or d) make an application for Dispute Resolution claiming against it. I find the landlord received the tenants forwarding address in writing on February 27, 2010. However, the landlord had already made an application to keep the tenants security deposit on February 23, 2010 before the end of the tenancy. As an application was made to keep the deposit (despite this having been made prematurely) I find the tenant is only entitled to recover her security deposit of **\$425.00** and not double the amount.

With regard to the tenants application for compensation for additional heating costs; I find the tenant has been unable to conclusively prove that the broken window contributed to additional heating bills or the length of time the window was left broken. When an applicant's testimony is contradicted by the respondents' testimony the burden of proof falls on the claimant to provide additional corroborating evidence to support her claim. In this instance the tenant has not provided corroborating evidence in this matter and therefore this section of her application is dismissed.

With regard to the tenants claim for \$800.00 in compensation for the loss of quite enjoyment, again the burden of proof falls on the tenants to provide corroborating evidence to support her claim that the smoke alarm repeatedly went off and the landlord failed to respond. I have reviewed the tenants e-mail correspondence with the landlord which refers to problems with the smoke alarm and indicates that the landlord did not look at the alarm to determine if it was faulty. The tenant also states that the landlord was threatening and intimidating towards her and her husband. However, she has provided no admissible evidence to support this section of her

claim. Consequently I find the tenant is entitled to a reduced amount for loss of quiet enjoyment of the rental unit due to the smoke alarm and it is my decision that the tenant is entitled to the sum of **\$200.00** pursuant to section 67 of the *Act*.

With regard to the tenants claim for an Order for the landlord to comply with the *Act*; as the tenant has now moved from the rental unit no order will be issued as it would not be enforceable as the tenant has now moved out. Consequently this section of the tenants claim is dismissed.

With regard to the landlords claim for three days unpaid rent of \$85.00. I find the tenancy agreement states the tenancy is for three months from November 28, 2009 to February 28, 2010. The landlord issued the tenant with rent receipts for the first two monthly periods from the 28th of the month to the 27th of the following month. I find therefore that this was the period each month that the landlord accepted rent for. Therefore, it would also follow that the landlord should have accepted rent from January 27, 2010 to February 28, 2010. Consequently I find the landlord has not established her claim that the tenants owe an additional three days rent and this section of her claim is dismissed. The landlord also seeks a loss of income for March, 2010 as she argues that the tenants acted in a way that put of prospective tenants. I find the landlord has the burden of proof in this matter and has been unable to establish that the tenants acted in a manner that put of prospective tenants. Consequently this section of the landlords claim is also dismissed.

The landlord seeks the amount of \$170.98 in unpaid utility bills. The landlord claims the amount of the utility bills is \$119.26 for gas and \$51.72 for electricity. However, the tenant dispute this amount and has provided a receipt showing a payment was made on February 18, 2010 for \$82.00. I have reviewed the utility bills provided by the landlord and the receipts for payments made given to the tenant by the landlord. I have based my decision on the 50% split of the gas bill and the tenants head count calculation for the electricity bill. It is therefore my decision that the tenants owe utilities to the sum of \$29.03 for Gas and \$34.08 for electricity to a total sum of **\$63.11**.

The landlord seeks the sum of \$126.00 for a bed frame she claims was broken by the tenants and \$80.00 for cleaning the unit at the end of the tenancy. The landlord has provided photographic evidence of the broken bed frame and a corner of the bathroom floor and a picture of some window tracks. Sections 23 and 35 of the *Act* say that a landlord must complete a

condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The landlord did conduct a move out condition inspection and this document does not show that the bed frame was broken and refers to the floor/carpet in the master bedroom and bedroom two as being 'not clean'. The tenant argues that the rental unit was returned to the landlord in a better condition than it was at the start of the tenancy and she has provided pictures of the carpets in the bedroom which show vacuum marks. This indicates to me that the tenant did clean the carpets in these rooms and the e-mail correspondence between the tenant and landlord shows that discussion took place regarding the stains on the carpet at the start of the tenancy. The landlord argues that the tenant did not clean the bathroom floor or the window tracks but neither of these areas are shown as unclean on the move out condition report. Consequently it is my decision that the landlord has not met the burden of proof in this matter and this section of her claim is also dismissed.

As both Parties have been partial successful with their respective claims I find they must both bear the cost of filing their own applications. As both Parties are entitled to some monetary award I have offset the landlords' award against the amount owed to the tenants. A Monetary Order has been issued to the tenants for the following amount:

Loss of a facility	\$150.00
Compensation for loss of quiet enjoyment	\$200.00
Monetary award for the tenant	\$775.00
Unpaid utilities for the landlord	(-\$63.11)

Total amount due to the tenant	\$711.89
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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 **\$711.89**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court. The remainder of the tenants' application is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlords' monetary award has been offset against the tenants' monetary award. The remainder of the landlords' application is dismissed without leave to reapply

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: July 12, 2010.

Dispute Resolution Officer