

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant and landlord agreed that the tenant handed the landlord a copy of his application for dispute resolution on October 7, 2010. I am satisfied that the tenant served a copy of his application to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for return of half of his security deposit? Is the tenant entitled to a monetary award and an order requiring the landlord to remove the tenant's responsibility for one-third of the electricity and gas bills for this rental property? Is the tenant entitled to recover his filing fee from the landlord?

Background and Evidence

This one-year fixed term tenancy commenced on October 1, 2010. According to the terms of the residential tenancy agreement, the tenant pays \$1,600.00 in monthly rent to the landlord, payable on the first of each month. In addition, the residential tenancy agreement requires the tenant to pay one-third of the electricity and gas bills for this residential property. The residential tenancy agreement requires the tenant to pay a

security deposit of \$1,600.00, one month's rent, to the landlord. The landlord confirmed that he continues to hold this \$1,600.00 security deposit paid on August 31, 2010.

The tenant applied for a monetary award of \$800.00. He testified that the landlord's requirement that he pay a full month's rent for his security deposit was in contravention of section 5 of the *Act*, which specifies that landlords and tenants cannot contract out of the *Act* or the regulations. He noted that section 19 of the *Act* limits the amount of security deposit the landlord may claim to one-half of one month's rent payable under the tenancy agreement. At the hearing, the landlord did not dispute the tenant's evidence that the landlord had overcharged him for his security deposit.

The tenant testified that the provision included in section 3 of his residential tenancy agreement requiring him to pay one-third of the electricity and gas bills for this residential property was not in accordance with the *Act* or the previous part of section 3(b) of this tenancy agreement. He said that the landlord checked boxes indicating that his water, electricity and heat were included in his rent. The tenant also asked for recovery of his filing fee from the landlord.

Analysis

I am satisfied by the tenant's undisputed evidence that the landlord did contravene section 19 of the *Act* by charging the tenant one full month's rent of \$1,600.00 for the tenant's security deposit. I grant the tenant a monetary award of \$800.00 to reflect his overpayment of the security deposit. I order the landlord to revise the amount of the security deposit for this tenancy to one-half of one month's rent, a total of \$800.00.

I find that the tenant signed the residential tenancy agreement knowing that the landlord was requiring him to pay one-third of the electricity and gas bill for the rental property. In addition to the statement that the tenant would assume one-third responsibility for these utility costs, the residential tenancy agreement included the typewritten statement "and Landlord agreed to show bill to the tenants." A handwritten and initialled statement was added to the bottom of this section of the residential tenancy agreement stating that

“Both landlord and tenant agree they will try their best to save energy and gas.” Based on the evidence, the tenant signed the residential tenancy agreement committing him to pay one-third of the hydro and gas bills for this property. I dismiss the tenant's application for a monetary award regarding this issue. I dismiss the tenant's application for an order to the landlord to vary the terms of the residential tenancy agreement regarding this issue.

As the tenant has been partially successful in his application, I issue a monetary award in the tenant's favour requiring the landlord to reimburse the tenant for the tenant's \$50.00 filing fee for this application.

Conclusion

I grant a monetary Order in the tenant's favour in the amount of \$850.00. This monetary Order reimburses the tenant for his overpayment of his security deposit and allows him to recover the filing fee for this application. I dismiss the remainder of the tenant's application.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.