



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the landlord and an application by the tenant.

The Landlord applied for dispute resolution on July 21, 2010 for;

- A Monetary Order for damage to the rental unit,
 - damage to a dryer, loss of a functioning stove, unclean unit, broken lawnmower
- Order to retain the security deposit in partial satisfaction of the monetary claims – \$600.
- Recover filing fee - \$50.

The Tenant applied for dispute resolution on November 30, 2010 for:

- Return of the security deposit of \$600, and compensation under section 38 of the Act - \$1200.
- A Monetary Order for compensation under section 51 of the Act - \$2400,
- A Monetary Order for compensation under section 67 for money owed under the Act, Regulation or Tenancy agreement for \$279.38, comprised of utilities paid.
- Recover filing fee - \$50.

The landlord testified that they failed to accept the tenant's registered mail in respect to

the tenant's application and evidence. I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing and evidence by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) and the Rules of Procedures for this hearing, the landlord did not accept it. However, the landlord had opportunity to hear the tenant's application and evidence and respond to it in the hearing.

Both parties attended and participated with their submissions, sworn testimony and document evidence, and were permitted to ask questions and attempt to settle all matters. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed ?

Is the tenant entitled to the monetary amounts claimed ?

Background and Evidence

The following is undisputed. The tenancy began on September 15, 2003. The tenant fully vacated July 04, 2010. Rent in the amount of \$1200 was payable in advance on the first day of each month – with a portion of utilities deducted by the tenant and the balance paid to the landlord. At the outset of the tenancy the landlord collected a security deposit of \$600 which the landlord still holds. There was no start or end of tenancy inspections conducted and recorded by the parties. The parties dispute the condition of the rental unit at the end of the tenancy, and there was no agreement reached between the parties as to the administration of the security deposit

The landlord testified that at the end of the tenancy the rental unit was left unclean, that the tenant took a functioning stove belonging to the landlord and that the tenant damaged a laundry dryer and a lawnmower. The landlord testified that they did not submit any supporting evidence in respect to their claim. The tenant disputes that he left the rental unit unclean, or that he damaged the dryer or lawnmower and that he did not take the landlord's stove, although he left it available and unattended for others to take it, during their move in late June, early July 2010.. The tenant has a suspicion as to who may have taken it, but neither party provided any evidence in this respect.

The tenant testified that he provided the landlord with a forwarding address on June 30, 2010, with which the landlord agrees, and which is supported by the tenant's evidence.

The tenant also testified that the landlord owes him \$279.38 for utilities – paid on behalf of the landlord, with which the landlord agrees and which is supported by the tenant's evidence.

The tenant testified that on November 28 he visited his former rental unit along with a witness and determined that the rental unit which the tenant previously occupied was rented to a Filipino female as of August 1, 2010. The tenant also prepared a statement for his witness to sign in support of the tenant's determination, and which mirrors the tenant's testimony. The tenant claims he has evidence that the landlord, whom is not Filipino, has not utilized the rental unit for the intended purpose for which the landlord issued the tenant a 2 Month Notice to End tenancy for landlord's use and is therefore claiming compensation of 2 month's rent as afforded by section 51 (2) of the Act. The landlord testified that this is the first time that he has heard of the tenant's allegations and was forthright in responding that he, as the landlord's son, moved into the rental unit as originally intended, on August 01, 2010, along with a Filipino female as his room-mate. The landlord is now aware of the tenant's visit on November 28, 2010, and that the tenant spoke to the sister of the room-mate. The landlord testified that he and his room-mate still reside in the rental unit today.

Analysis

I have considered all evidence, all submissions to both claims and have considered all testimony given in the hearing. On preponderance of all the evidence, and on the balance of probabilities, I have reached a decision.

As to the landlord's claims:

I find that the landlord has not supported any aspect of their claims with sufficient supporting evidence. I further find that the landlord did not file for dispute resolution within the time afforded by the Act to make a claim against the security deposit; and, as a result, **I dismiss** the landlord's claim for damages to the unit, without leave to reapply.

As to the tenants' claims:

On preponderance of the evidence, I find that the parties are in agreement that the tenant is owed **\$279.38** for utilities paid on behalf of the landlord.

On preponderance of the evidence provided by both parties I find that, on the balance of probabilities, the tenant has not provided sufficient evidence to advance their determination and assertion that the landlord has not taken the necessary steps to accomplish the stated purpose for ending the tenancy under Section 49 – having issued

the tenant a 2 month Notice to end tenancy for landlord's use. As a result, **I dismiss** this portion of the tenant's application, without leave to reapply.

Section 38(1) of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of the tenant vacating July 04, 2010 – having received the tenant's forwarding address in writing on June 30, 2010, and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$600 and was obligated under section 38 to return this amount together with the \$21.24 in interest which had accrued. The amount which is doubled is the \$600 original amount of the deposit before interest. As a result I find the tenant has established an entitlement claim for **\$1221.24** and is further entitled to recovery of the **\$50** filing fee.

The tenant's total entitlement is **\$1550.62**.

Conclusion

The landlord's application **is dismissed**, without leave to reapply..

I grant the tenant a Monetary Order under section 67 of the Act for the amount of **\$1550.62**. If necessary, this order may be filed in the Small Claims Court 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*.