



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes MNDC, MNSD

Introduction

This was an application by the tenant for a monetary order including the return of her security deposit. The hearing was conducted by conference call. The tenant and the landlord participated in the hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order and if so, in what amount?

Background and Evidence

The tenant initially rented a unit in the landlord's apartment building commencing May, 2009. Rent was \$625.00 and the tenant paid a security deposit of \$312.00. In January, 2010 the tenant moved to another rental unit. The new unit rented for \$650.00 per month inclusive of heat. The tenant did not pay an increased security deposit; her old deposit remained in place, but the tenant agreed to a \$40.00 deduction from her deposit based on the condition of her former apartment.

The tenant gave written notice that she was moving and provided her forwarding address to the landlord on May 30, 2010. She moved out on June 30, 2010. The tenant testified that she was without heat in her apartment because the gas fired boiler that supplied hot water was shut down for safety reasons in February. The heat was not restored for the remainder of her tenancy. The tenant claimed compensation in the amount of \$100.00 for the lack of heat. She claimed \$50.00 as compensation for cleaning she had to perform when she moved into the rental unit in January and \$20.00

for having to deal with a leaky refrigerator. The tenant claimed that she was entitled to \$650.00, being double the double the amount of the deposit, less the sum of \$272.00 received from the landlord for a total claim of \$548.00.

The tenant paid \$620.00 rent for the month of June, 2010; she made a unilateral deduction of \$30.00 because there was no heat supplied to her unit. According to the landlord the tenant received a \$30.00 rent reduction for one month and then made a second \$30.00 deduction without the landlord's consent.

The landlord sent the tenant the sum of \$272.00 in two instalments on July 20, 2010 and on the following day. She said that the payment was late because she was away on holidays and forgot to deal with it before she left on July 8th,

The landlord disputed the tenant's testimony that the rental unit was in need of cleaning when the tenant moved in on January 1, 2010. She said that the former occupant was a professional cleaner and the landlord she saw that the apartment was properly cleaned before the tenant moved in. The landlord said that the tenant never notified her about the ongoing fridge problem. She said that she took steps to deal with water leaking from the refrigerator before the tenant moved in and had she been told there was still a problem she would have replaced the refrigerator with a new one.

Analysis and conclusion

The Landlord acknowledged that the tenant and other occupants of the building were without heat for several months beginning at the end of February, 2010. She said that the landlord turns off the hot water heat in the summer months and she said the tenant was allowed to reduce her rent by \$30.00 for one month and that she reduced it for a second month without the landlord's consent. The reduction was intended to compensate the tenant for the cost to operate an electrical heater. Initially the landlord retained the sum of \$30.00 from the tenant's security deposit but later returned it to her. The tenant claimed compensation in the amount of \$100.00 for the lack of heat. She

has received \$60.00 compensation by way of rent reductions for two months. I find that the tenant likely needed to provide supplementary heat for the months of March, April and May. She was compensated for two of those months. I award her the sum of \$30.00 for loss of heat for the third month for which she received no compensation.

With respect to the tenant's claim for cleaning costs when she moved to the new rental unit in January, the tenant claimed that it was not properly cleaned, but the landlord disagreed. She said that the former tenant left it well cleaned. There are no photographs of the rental unit and no evidence that the tenant requested compensation when she moved into the new apartment. I find that the tenant has not proved on a balance of probabilities that cleaning was required or that she is entitled to compensation for cleaning. This aspect of her claim is denied.

With respect to the \$20.00 refrigerator claim the tenant did not make a request for repairs. The landlord was prepared to replace the refrigerator if there was a problem, but she received no notice from the tenant. In the absence of any request from the tenant and evidence of a failure to repair, the landlord cannot be liable to the tenant; this claim by the tenant is also denied.

The tenant has requested payment of double the amount of her security deposit. Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an Order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. If the landlord does not comply with these provisions, he may not make a claim against the deposit and must pay the tenant double the amount of the deposit.

In her application the tenant claimed payment of the sum of \$650.00. In fact her security deposit was not \$325.00, it was calculated on her initial rent of \$625.00. the tenant actually proved a deposit of \$312.00 when she moved into the rental property in May, 2009. The tenant agreed to a \$40.00 deduction from her security deposit when she vacated her old apartment and moved into the new one in January. I find that her deposit with respect to the new rental unit was \$272.00, being the amount of her original deposit less the agreed deduction.

The landlord failed to return this amount within 15 days of the end of tenancy. The fact that she was away on holiday for part of that period does not alter the landlord's obligation to either return the deposit or make a claim against it within the 15 day period. I find that the tenant is entitled to an award of double the amount of her \$272.00 deposit. She is entitled to \$30.00 for lack of heat for an additional month. The tenant has received her original deposit albeit late and it must be applied to reduce the amount awarded. She is entitled to the award of a further \$302.00. The tenant did not pay a filing fee for her application and I do not award any filing fee for this application. I grant the tenant a monetary order under section 67 in the amount of \$302.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: December 06, 2010.
