



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD

Introduction

This was the hearing of an application by the tenant for a monetary order for money spent on repairs to the rental unit and return of the security deposit. The hearing was conducted by conference call. The tenant and the landlords participated in the hearing.

Issues(s) to be Decided

Is the tenant entitled to be reimbursed for the cost to replace an appliance?

Is the tenant entitled to payment of her security deposit including double the amount of the deposit?

Background and Evidence

The rental unit is a residential house. The tenancy began on July 1, 2008. Monthly rent was \$1,400.00. The tenant paid a \$700.00 security deposit shortly after July 1st. She moved into the rental unit on or about July 15th.

I was not provided with a copy of the tenancy agreement, but there is no dispute that the tenancy agreement prepared by the landlord included a written “amendment” that made the tenant responsible for repairing appliances supplied by the landlord.

In February, 2009 the washing machine stopped working. The tenant testified that she had not abused it. The landlord told her that it was up to her to repair it. She contacted a repairman who told her it would be less expensive to replace it. The tenant purchased

a new washing machine. She provided a copy of the purchase invoice in the amount of \$392.00 dated February 16, 2009.

The tenant received a two month Notice to End Tenancy for landlord's use. The landlords issued the Notice because they sold the house and the new owners intended to live in the house. The tenant moved out on June 27, 2010. She said that a home inspection was done on June 28, 2010, but no written report was prepared. According to the tenant the landlord complained about some mildew on a concrete walkway. She said that previously the landlord mentioned that there was mildew on the sun deck and he said that he would pressure wash it for her. The tenant asked the landlord about the return of her deposit. She said that she was expecting the landlord would want to make a small deduction, perhaps \$25.00 for cleaning the walk way. She called the landlord about her deposit and it was finally agreed that the landlords would meet with her on July 20, 2010. When she met with them they gave her a cheque in the amount of \$415.00 and a receipt for \$200.00 for: "Power Wash Whole House Driveway/sidewalk".

The cheque from the landlord was unsigned and could not be negotiated. The tenant submitted her application for Dispute Resolution and served the landlord by registered mail sent on July 28, 2010.

By letter dated August 9, 2010 the landlords said in part:

Firstly, we wish to apologise for the oversight of forgetting to endorse the cheque and simply wish to clarify that it was done only in error and is something we wish to rectify.

The landlord quoted the provisions of section 38 of the *Residential Tenancy Act* and then said:

Accordingly, we confirm that on August 3, 2010, the date on which we received the Notice, this was the first instance in which we have been provided with your new forwarding address despite the fact that we had requested same from you verbally as well as in our May 30, 2010 letter (sent to the rental property address referenced above).

The tenant received the landlord's replacement cheque but she has not cashed it.

Analysis and Conclusion

section 32 (1) of the *Residential Tenancy Act* and the standard tenancy terms set out in the schedule to Residential Tenancy Regulation requires a landlord to provide and maintain the residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Residential Tenancy Policy Guideline #1, *Landlord & Tenant – Responsibility for Residential Premises* provides:

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

The standard terms are mandatory terms of every tenancy agreement. Section 14 of the *Residential Tenancy Act* provides that a tenancy agreement may not be amended to change or remove a standard term. The term inserted by the landlord purporting to make the tenant responsible for the repair of the landlord's appliances contradicts the landlord's obligation to maintain the rental property, including the obligation to repair appliances provided as part of the tenancy.

Given the landlord's inclusion of the invalid term making the tenant responsible for the landlord's appliances I find that the tenant is entitled to be compensated for the purchase price of the washing machine. The machine was left at the rental property and the landlord received the benefit of it. I award the tenant the sum of \$392.00 as claimed.

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 Arbitration. 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. Section 38 (6) provides that 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 security deposit.

The landlords acknowledged receiving the tenant's forwarding address when they received the application for dispute resolution. They did not have the tenant's written consent to keep a portion of the deposit. They therefore had 15 days within which to return the entire deposit or to make a claim against it by filing their own application for dispute resolution; instead the landlords kept the sum of \$285.00 and returned only \$415.00 of the original deposit.

The sum of \$415.00 was returned within the 15 day period and the sum of \$285.00 retained by the landlords constituted the deposit held by the landlord to which the doubling provision of section 38(6) applies. The landlords did not calculate interest on the deposit. Interest in the amount of \$5.05 accrued on the original deposit. I find that the tenant is entitled to an award of \$580.10 being double the amount of the deposit and interest retained by the landlord. The total award to the tenant is the sum of \$972.10. This is in addition to the \$415.00 already paid. The tenant is entitled to recover the \$50.00 filing fee paid for her application and I grant her a monetary order under section 67 in the amount of \$1,022.10. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: December 15, 2010.
