



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord has requested orders for monetary compensation under the Act or tenancy agreement, for damage to the rental unit, to keep all or part of the security deposit, and to recover the filing fee for the Application.

The Tenant has requested monetary orders for compensation under the Act or tenancy agreement, for return of the security deposit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to the monetary compensation sought?

Is the Tenant entitled to the monetary compensation sought?

Background and Evidence

This tenancy began on June 1, 2009 and ended on or about September 27, 2010, rent was \$700.00 per month and a security deposit of \$350.00 was paid on or about June 1, 2009.

The Landlord submitted evidence and photos concerning unpaid utilities, alleged damage to the rental unit by the Tenant, cleaning, lock changes, flood damage and lost items such as a missing stove drawer, totalling \$828.00. However at the hearing, the Landlord testified that the amount of her claim is \$523.00, as indicated on her

Application. This amount consisted of alleged unpaid utilities of \$450.00 (\$75.00 x 6 months) and \$73.00 for an undetermined item.

In support of her Application for unpaid utilities, the Landlord testified that although the tenancy agreement stated that rent was \$700.00 per month and \$25.00 per month for utilities, the intent of the parties was that the additional \$25.00 per month was for each person residing in the rental unit, not for the entire rental unit.

The Landlord testified that she was unaware the Tenant would have her two children live in the rental unit, as well as she did not know the Tenant's husband/boyfriend would live in the rental unit. Therefore, according to the Landlord, it was her understanding that the utilities should be increased by \$50.00 per month, to \$775.00 and then later, the utilities were to be increased by another \$25.00 per month, to \$800.00, as the Tenant's husband/boyfriend lived in the rental unit.

The Landlord testified that she was sick when she signed the tenancy agreement and thus did not know the significance of the term for \$25.00 per month for utilities in the tenancy agreement.

The Landlord acknowledged that she received payments for rent and utilities from the Tenant in the amount of \$725.00 per month for June through September 2009, \$775.00 per month for October 2009 through February 2010, and \$800.00 per month for March through September 2010, when the tenancy ended. The Landlord also acknowledged that she has not returned the Tenant's security deposit.

In support of her Application disputing a rent increase and for a return of her security deposit, the Tenant's testimony disputed the Landlord's testimony and that it was her, the Tenant's, clear understanding that the term in the tenancy agreement ("\$25.00 per month for utilities additional to rent") was for the rental unit, and not per person. The Tenant testified that she had her two young children with her when meeting the Landlord initially and has always had her two children living with her. The Tenant denied that her boyfriend lived in the rental unit as it was just she and her two young children residing there.

The Tenant testified and supplied evidence that in September 2009, the Landlord requested a meeting, at which time she complained to the Tenant that she needed time to process personal cheques and requested rent payments for the next month to be paid by the 15th day of the previous month. The Tenant further submitted that the Landlord informed her that she, the Landlord, was in financial trouble and that she had to raise the rent by \$50.00 per month. The Tenant complied with that request,

increasing her payments in October to \$775.00 per month, even though she did not receive a 3 month written notice of a rent increase.

The Tenant submitted that in February 2010, the Landlord informed her she was in danger of losing the house as she was behind in her bills and mortgage payments, causing the Landlord to demand another \$25.00 per month in rent increase. The Tenant submits she complied with this request as it was during the Olympics and rent had significantly increased during this time. The Tenant submitted that she began paying the higher rent in March 2010, even though she did not receive a 3 month notice of rent increase.

The Tenant submitted that the tenancy ended in September 2010, due to the Landlord informing her that the rental unit did not pass an assessor's inspection and that she had to remove the refrigerator and stove.

The Tenant then gave a written 30 day notice to the Landlord and requested the return of the security deposit.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

Section 14(1) of the Residential Tenancy Act provides that “a tenancy agreement may not be amended to change or remove a standard term.” I note that the rent obligation is a standard term and thus may not be changed.

I find the tenancy agreement clear and unambiguous that the obligation of the Tenant was to pay \$700.00 per month for rent and \$25.00 per month for utilities for the rental unit, and not per person.

Based upon the submissions of the parties, I find that the Tenant overpaid utilities during the course of the tenancy beyond her obligation required in the tenancy agreement as follows:

Utilities owed (June '09 to Sept. '09, \$25.00 per month under the tenancy agreement)	\$100.00	Utilities paid (June '09 to Sept. '09, \$25.00 per month)	\$100.00
Utilities owed (Mar. '10 to Sept. '10, \$25.00 per month under the tenancy agreement)	\$175.00	Utilities paid (Mar. '10 to Sept. '10, \$100.00 per month)	\$700.00
Total Utilities owed	\$400.00	Total Utilities paid	\$1,175.00
Total Utilities overpaid			\$775.00

As to the Landlord's claim, I find that the Landlord received \$25.00 from the Tenant each month during the tenancy for utilities as required in the tenancy agreement and I therefore **dismiss** the Landlord's claim for **\$450.00** for unpaid utilities.

Additionally as the Landlord provided no specific evidence as to the balance of her claim for \$73.00, I was unable to determine to which item this amount referred. I therefore **dismiss** her remaining claim for **\$73.00** and I therefore **dismiss** her claim in its entirety.

As to the Tenant's claim, I find the Tenant has established a monetary claim in the amount of **\$1,175.00**, consisting of \$775.00 for overpaid utilities as referenced above, the security deposit of \$350.00 and the filing fee of \$50.00. Therefore, I **grant** the Tenant a **monetary order** for that amount.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's Application is dismissed.

The Tenant is granted a monetary order in the amount of **\$1,175.00.**

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: February 16, 2011.

Residential Tenancy Branch