



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNR, MNSD, MNDC, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties sought a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

At the outset of the hearing the landlord's agent identified that he had amended the Application to not include an order of possession, I noted that I did not have the amendment in the file. After the hearing, I located the landlord's amended Application confirming the landlord only seeks a monetary order.

In the tenant's Application and tenancy agreement the tenants from the upstairs unit were named as the landlord. In the landlord's Application a different person was named as the landlord and that person was represented in the hearing by her agent (husband).

The landlord's agent originally asserted that the owner was not the landlord in this case but rather they had rented the full house to the upstairs tenant and the upstairs tenant rented the basement to this tenant.

The tenant testified that the landlord's agent in this hearing held the security deposit and that it was the agent who showed them the rental unit prior to taking it and he who completed the walk through inspections, despite no condition inspection reports being completed. The landlord agreed with this testimony.

As a result, I find the landlord in this tenancy was in fact the landlord named on the landlord's Application for Dispute Resolution and that the party named in the tenant's Application as no standing in this dispute, other than acting as an agent for the landlord. I therefore amend the tenant's Application to name the landlord as that listed on the landlord's Application.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; for damage to the rental unit and cleaning; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for

Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for compensation; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 49, 51, 67, and 72 of the *Act*.

Background and Evidence

Two tenancy agreements were submitted into evidence, the first tenancy agreement named two tenants and after one of those two moved out of the rental unit a new tenancy agreement was signed by the parties.

The second tenancy agreement was signed by both parties on September 1, 2010 for a 1 year fixed term tenancy beginning on July 15, 2010 for monthly rent of \$300.00 due on the 1st day of each month with a security deposit of \$450.00 paid on July 15, 2010. This tenancy agreement had a handwritten notation that said "1/3 utilities".

The tenant ended on or before March 31, 2011 after the tenant was issued a 2 Month Notice to End Tenancy for Landlord's Use of Property issued to the tenant on January 10, 2011 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenant seeks return of her security deposit and compensation from the landlord as the landlord has failed to use the rental unit for the stated purpose in the notice to end tenancy issued on January 10, 2011.

The landlord submitted a written statement and her agent confirmed that the family will be converting the rental unit into a licensed family childcare facility and that no one will be living in the rental unit. The work is not yet completed that is required prior to opening the facility.

The landlord seeks compensation for damage and cleaning to the rental unit. The landlord submitted photographs of damage to walls; a floor; a missing ceiling light cover and a dirty oven. The landlord also provided a receipt for "repair work done in the basement of the house..." for \$1,000.00 – no details of work completed or a breakdown of the charges was provided.

The landlord also seeks compensation for hydro charges of \$230.79 for the period November 17, 2010 to April 8, 2011 and for gas charges of \$256.59 for the period from December 2010 to March 2011. The parties agree the tenant owes the landlord something for utilities but the tenant disagrees with the amount calculated by the landlord.

The tenant has provided receipts, that while issue dates on some had been corrected by the landlord's agent (upstairs tenant) the receipts themselves identify the hydro for "Oct & Nov"; "Gas for Dec 2010 – still owing \$20.00"; "Gas for Oct & Nov". In addition there is a receipt dated Sept 21, 2010 for gas and one dated Oct 8, 2010 for hydro.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy for landlord's use of the property. A landlord may end the tenancy if, among other things, the landlord or a close family member intends to occupy the rental unit or the landlord intends to convert the rental unit to a non-residential use.

Section 51 stipulates that a tenant who receives a notice to end a tenancy under Section 49 is entitled to compensation in the form of one month's rent, which the parties agree the tenant was provided. In addition, if the landlord fails to take steps to accomplish the stated purpose within a reasonable time after the effective date of the end of the tenancy or the rental unit is not used for the stated purpose for at least 6 months within a reasonable period after the effective date, the landlord must pay the tenant an amount that is equivalent of double the monthly rent under the tenancy agreement.

As the landlord's agent indicated on the 2 Month Notice to End Tenancy was for the landlord or a close family member to occupy the rental unit and the landlord's statement and her agent's testimony the rental unit will be used for a childcare facility or a non-residential use. I find the landlord has not and is not intending to use the rental unit for the stated purpose on the Notice to End Tenancy. As such, the landlord must pay the tenant the equivalent of two month's rent.

Section 38(1) of the *Act* requires a landlord to, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) states that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit.

The tenant provided the landlord with her forwarding address when she served the landlord's agent with her Application for Dispute Resolution on April 21, 2011. The landlord has not returned her security deposit and filed her Application to claim against the security deposit on August 3, 2011. As such, I find the landlord has failed to comply with Section 38(1).

As to the landlord's claim for damages and cleaning, in the absence of any evidence of the condition of the rental unit at the start of the tenancy, I cannot determine if the damage the landlord seeks compensation for occurred during the tenancy, except for the condition of the stove. I accept that the landlord may have had to clean the stove, however, as the landlord failed to provide a breakdown of the charges for any of the

“repair” work, I cannot determine the value of compensation for cleaning the stove. I therefore dismiss this portion of the landlord’s Application.

Finally, in relation to the utility charges, I accept the charges as outlined by the landlord have been incurred, in relation to this tenancy. I also accept that the tenant had provided payment for utility charges as proven by the receipts presented, however I find that these are payments for previous bills and that payment has not been made by the tenant for the charges the landlord seeks.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,237.62** comprised of \$900.00 double the security deposit; \$1,800.00 compensation for ending the tenancy; less \$487.38 utilities; the \$50.00 fee paid by the tenant for her Application; and less \$25.00 of the \$50.00 fee paid by the landlord for her Application, as she was only partially successful.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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*.

Dated: August 12, 2011.

Residential Tenancy Branch