



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing dealt with cross applications. The tenant applied for a Monetary Order for return of double the security deposit and land title search fees. The landlord applied for a Monetary Order for damage to the rental unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the tenant entitled to double the security deposit?
2. Has the tenant established an entitlement to recovery of land title search fees?
3. Has the landlord established an entitlement to compensation for damage to the rental unit; unpaid rent or utilities; and, damage or loss under the Act, regulations or tenancy agreement?
4. Should the security deposit be returned to the tenant or retained by landlord?

Background and Evidence

Both parties provided consistent background evidence as follows. The rental unit is a basement suite and the landlord lives on the main level. The tenancy commenced December 1, 2010 and ended December 31, 2010. The monthly rent was \$1,100.00 and the tenant paid a \$600.00 security deposit at the beginning of the tenancy. The landlord did not prepare a move-in or move-out condition inspection report.

Tenant's application

The tenant submitted that approximately six days after the tenancy began the landlord presented him with a tenancy agreement to sign. The tenant signed the tenancy agreement but was not provided with a copy of the agreement. The tenant had to go to the land titles office to determine the landlord's legal name since he was not provided a copy of the tenancy agreement.

The tenant provided his forwarding address to the landlord via registered mail sent February 3, 2011 and received by the landlord February 4, 2011. The tenant did not receive any response from the landlord until he was served with the landlord's application which included a copy of a tenancy agreement that indicates utilities of \$350.00 was payable every month, in addition to rent. The tenant was of the position that the monthly rent of \$1,100.00 was to be inclusive of utilities. The tenant is seeking return of double the security deposit and recovery of the land title search fees.

The landlord acknowledged receiving the tenant's forwarding address via registered mail on February 4, 2011. The landlord claimed that she responded to the tenant in writing and outlined the damages and amount owed to her by the tenant. The landlord submitted that the tenant did not respond to her letter and then the landlord had to go to China due to her father's death. The landlord made her application seeking authorization to retain the security deposit on June 9, 2011.

Landlord's application

The landlord submitted that the tenancy agreement provides that heat and hydro were not included in the monthly rent, as evidence by the signed tenancy agreement. The landlord initially testified that the tenant was given a copy of the tenancy agreement after he signed it. However, upon enquiry as to when and how a copy was made the landlord changed her testimony to state that the tenant was given the original agreement and the landlord kept a copy for herself. Although the tenancy agreement provides that the tenant shall pay \$350.00 for utilities monthly the landlord explained that it was "illogical" to ask the tenant to pay for utilities until after the tenancy ended.

The landlord testified that her hydro bill jumped to \$900.00 while the tenant and his family lived in the rental unit. The landlord claims the tenant left lights on all the time and that she did not continue with the tenancy because of the high utility consumption by the tenants and his noisy children.

In addition to the unpaid utilities, the landlord is seeking to recover \$100.00 for a broken microwave, \$50.00 for the damaged hood fan, \$100.00 for cleaning stains on the carpet, and \$100.00 for a missing piece of a light fixture.

The tenant denied damaging the items identified by the landlord and explained that the missing piece of the light fixture was like that when he moved in. The landlord submitted the rental unit was newer but acknowledged the microwave was older and the landlord's claims were based on estimates. The landlord submitted a hand-written

document, allegedly signed and dated by the in-coming tenant on January 15, 2011, that lists the damages to the rental unit.

The tenant's advocate suggested to the landlord that the average hydro consumption for the residential property is approximately \$250.00. In response, the landlord stated that after the tenant vacated the rental unit the landlord's utility bill returned to approximately \$200.00.

The tenant's advocate argued that utilities were included in the monthly rent and even if the tenant did sign the agreement indicating utilities were an additional \$350.00 per month, such a term is unconscionable given the excessive amount payable for a small basement rental unit and the landlord's actual costs.

Analysis

I have accepted and considered all of the documentary evidence and written submissions provided to me by both parties. I provide the following findings and reasons with respect to each of the applications before me.

Tenant's application

Section 38(1) of the Act requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Should a landlord fail to comply with the requirements of section 38(1) the landlord must pay the tenant double the security deposit pursuant to section 38(6) of the Act.

Upon review of the evidence before, including the registered mail tracking information and the landlord's own admission, I accept that the landlord received the tenant's forwarding address, in writing, on February 4, 2011. Accordingly, the landlord had 15 days to either return the security deposit to the tenant, file an Application for Dispute Resolution, or obtain the tenant's written consent to make deductions from the security deposit. The landlord did not return the security deposit or obtain the tenant's written consent for deductions. The landlord filed an application on June 9, 2011. Therefore, I find the landlord violated section 38(1) of the Act and must pay the tenant double the security deposit pursuant to section 38(6).

The tenant failed to provide evidence to substantiate the costs associated to a land title search and I deny that portion of his claim.

I award the tenant the filing fee he paid for his application. Accordingly, the tenant is awarded a total of \$1,250.00 [(\$600.00 x 2) + \$50.00].

Landlord's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, the landlord must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The parties were in dispute as to whether the monthly rent included utilities. Upon hearing from both parties, and based on the balance of probabilities, I find it more likely that the landlord altered the tenancy agreement to reflect a monthly charge of \$350.00 for utilities in addition to rent. I have made this determination based upon the following factors:

- a) The landlord could not provide an original tenancy agreement for me to examine;
- b) The landlord claims that she took the unusual step of giving the original tenancy agreement to the tenant after hearing the tenant make submissions that he was not provided a tenancy agreement after he signed one;
- c) A utility charge of \$350.00 per month is very high for a basement suite especially when the landlord acknowledged her bill was approximately \$200.00 when the tenant was not in possession of the unit;
- d) The landlord did not provide any hydro bills in an attempt to justify the charge of \$350.00 for utilities when the tenancy formed;
- e) During the hearing the landlord was highly focused on the tenant's high utility consumption while he was in possession of the rental unit; and,
- f) Had the landlord been entitled to a fixed amount of \$350.00 per month for utilities under the tenancy agreement it would not be dependent on usage and the amount would have been payable during the tenancy, yet the landlord did not pursue this claim until after the tenancy ended.

In light of the above, I find the tenancy agreement did not originally provide for payment of \$350.00 in utilities and I deny this portion of the landlord's claim.

With respect to damage to the rental unit, I was presented with disputed verbal testimony. I find the disputed verbal testimony to be insufficient to establish the tenant damaged the rental unit. I gave little evidentiary weight to the document signed dated January 15, 2011 as the incoming tenant was not called upon to testify or verify his signature and the list was made 15 days after the tenancy ended. Nor did the landlord provide a move-in or move-out condition report, photographs, or other evidence that would satisfy the landlord's burden of proof. Therefore, I deny the landlord's claim for compensation for damages to the rental unit.

Since all of the landlord's claims have been denied and I make no award for recovery of the filing fee for the landlord. Accordingly, the landlord's application is dismissed in its entirety.

Monetary Order

The tenant was successful in his application and the landlord's application was dismissed entirely. In accordance with my findings, I provide the tenant with a Monetary Order in the amount of \$1,250.00 to serve upon the landlord and enforce in Provincial Court (Small Claims) as necessary.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$1,250.00 to serve upon the landlord and enforce as necessary. The landlord's application has been dismissed without leave to reapply.

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 18, 2011.

Residential Tenancy Branch