

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord is seeking a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee. The Tenant is also seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and the return of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing, the Tenant has confirmed receiving the Landlord's notice of hearing and evidence package. The Tenant states that she sent the Landlord her notice of hearing and evidence packages by registered mail. The Landlord's agent states that she did not receive them. The Tenant states that the package was sent to the Landlord at the address of service supplied by the Landlord. The Tenant has supplied the Canada Post Registered Mail Receipt in evidence. The Tenant further states that the package was unclaimed and that notices were left for the Landlord to obtain the packages at the local Postal Outlet. The Landlord's Agent states that the Landlord is out of the country and that there is infrequent access to the service address for mail. I find that although the Landlord's agent is not in receipt of the Tenant's evidence that the Landlord was properly served by registered mail on October 19, 2011 and is deemed served under the Act 5 days later.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to keep all or part of the security deposit?

Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on February 1, 2011 on a fixed term tenancy agreement until January 31, 2012 as shown in the submitted copy of the signed tenancy agreement. The monthly rent indicated is \$1,400.00 payable on the 1st of each month. Both the

Landlord and Tenant did not complete a condition inspection report for the move-in or move-out.

The Tenant states that the security deposit was \$700.00 and not the indicated \$550.00 on the signed tenancy agreement. The Tenant states that it was an error made by the Landlord when the tenancy agreement was signed but never corrected. The Tenant has supplied a copy of a "down payment" cheque given to the Landlord dated January 3, 2011 for \$700.00. The Landlord's agent states that she is unable to comment as she is unaware of any information on this issue and has not been provided any information concerning the security deposit from the Landlord.

The Tenant is seeking to claim \$259.90 and \$216.00 for the loss of cable and internet charges for the term March 26, 2011 to July 16, 2011. The Tenant states that cable service was included in the tenancy agreement, but in March of 2011 were discontinued without notice from the Landlord. The Tenant states that cable was withdrawn, but has never been compensated for a reduction in rent for the loss of this service or that the Landlord has not provided a new service in lieu. The Tenant states that her wireless internet password was given to new tenants from a previous tenant, K.W. The Landlord disputes this. The Tenant states that the password was given to the Tenant, T.Q. who in turned passed along the password to K.W.

The Tenant is also seeking \$93.90 for Hydro costs and \$241.51 for Terasen Gas charges from her previous tenancy. The Tenant states that these costs were incurred in a previous tenancy and that the Landlord did not withheld these bills that were dated in for February 2011 and was not received until mid July 2011. The Landlord disputes these charges and states that the Tenant should be responsible for determining her own billing arrears. The Tenant states that she suffered difficulties in arranging utilities at her new tenancy because of the payment delay.

The Tenant is seeking compensation for ½ weeks salary of \$525.00 for lost wages due to anxiety and fear of damages to personal property because she had to stay home during the day for one week (July 11-15). The Tenant references a letter submitted from her employer. The letter dated August 8, 2011 states that the Tenant "requested To work from home".

The Landlord is claiming \$1,400.00 in unpaid July 2011 rent. The Tenant gave notice to vacate the rental unit on April 16, 2011 to end the tenancy on July 31, 2011. Both parties agree that the Tenant vacated the rental unit on July 15, 2011 and did not pay July rent. The Tenant states that she was told that the unit was re-rented by a new tenant starting July 15, 2011. The Landlord disputes this stating that the unit was re-

rented sometime in August of 2011. The Tenant has not provided any evidence that the unit was re-rented.

The Landlord is claiming \$700.00 in liquidated damages as shown in the signed tenancy agreement in section 5. The signed tenancy agreement was for a fixed term ending January 31, 2011 which both parties have acknowledge ended prematurely on July 15, 2011.

The Landlord is seeking \$900.00 (\$150.00 X 6 months (end of fixed term tenancy)) in compensation as the rental unit was re-rented in August 2011 at a lower rent amount of \$1,250.00 with new tenants as opposed to the \$1,400.00 in the fixed term tenancy with the tenant. The Tenant disputes that the Landlord is not entitled to this claim as the rental is an illegal unit and as the witness, K.A. a bylaw enforcement officer for the municipality has testified.

The Landlord is seeking to claim \$95.00 for the cost of hauling garbage after the tenancy ended. The Tenant disputes this stating that there was no condition inspection report, receipts or evidence for this claim.

The Landlord is seeking \$1,400.00 in compensation because she states that the Tenants were "impeding" the interests of the Landlord by deterring others from renting. The Tenant disputes that this took place. The Landlord has not provided any evidence in support of this claim. The Landlord's agent has also been unable to provide any details on how the claim amount was determined. The Landlord's agent stated that this was an arbitrary amount.

Analysis

As both parties have attended the hearing and have given detailed reference to the evidence packages submitted, I am satisfied that both have been properly served with the notice of hearing and evidence packages. The Landlord is deemed to have been served by registered mail as submitted by the Tenant.

I find based upon the undisputed testimony and documentary evidence submitted by the Tenant that the security deposit was \$700.00 and not the \$550.00.

The Tenant has failed to establish a claim for the \$216.00 for internet services. I find that the Tenant has failed to provide any evidence that the Landlord was negligent as the password was given to the other tenant, T.Q. by the tenant and was subsequently passed along to the new tenant, K.W. the Tenant has failed to show how she suffered a loss as a result of this. I do however find that there was a loss of cable services as it

was clearly shown that it was provided for under the signed tenancy agreement. The Landlord's agent could provide no information to dispute this claim by the Tenant. As such, I find that the Tenant has shown that a service that was agreed upon was not provided and I award the recovery of cable costs of \$259.90 to the Tenant. The Tenant's claim for internet costs is dismissed.

The Tenant has failed to establish a claim for a loss for the two overdue utility bills. The Tenant has provided no evidence of fees charges. The Tenant had stated in her direct testimony that the entire invoice amounts were for charges from her previous tenancy. The Tenant's application for compensation for the overdue utility bills is dismissed.

The Tenant's claim for \$525.00 in salary due to anxiety and fear of damages to personal property has not been established. The letter submitted by the Tenant, clearly states that the Tenant was able to work from home and suffered no loss. Although the letter states that the Tenant had concerns over the end of tenancy, she could clearly perform her duties. The Tenant further states that a reprimand and possible termination could have resulted, but has failed to provide any evidence of such. This portion of the Tenant's application is dismissed.

I find based upon the undisputed testimony of the Landlord that she has established a claim for the \$1,400.00 in unpaid July 2011 rent and is entitled to this recovery in a monetary claim. The Tenant stated in her direct testimony that the July rent was not paid due to communication being a barrier at the end of the tenancy.

I find that the Landlord has established a claim for liquidated damages of \$700.00 as shown that the Tenant ended the tenancy prematurely.

I find based on the testimony submitted that the Landlord is entitled to compensation for the loss of rent for the difference between the old and new tenancy agreements of \$150.00 per month. However, as the fixed term tenancy ends January 2012 and the Landlord has not yet suffered a loss for the portion of time from November 2011 to January 2012 that this portion of the Landlord's claim is premature and is dismissed with leave to reapply. I find that the Landlord is only entitled at the time of the hearing to recovery of \$450.00 for the difference of the 3 month loss from August to October inclusive.

The Landlord has failed to supply any supporting evidence against the Tenant's dispute for the claim of \$95.00 in garbage hauling. As such, I find that the Landlord has failed to establish a claim for this amount and this portion of the Landlord's claim is dismissed.

The Landlord's claim for compensation of \$1,400.00 for deterring others from renting has not been established. The disputed claim has not been supported by any evidence. I find that this portion of the Landlord's claim is dismissed.

I find that the Tenant has established a total claim for the return of the \$700.00 security deposit and \$259.90 for the loss of cable services totalling, \$959.99.

I also find that the Landlord has established a total claim for \$1,400.00 in unpaid July rent, \$700.00 in liquidated damages and \$450.00 in loss of rental income totalling, \$2,550.00.

As both parties have been successful in their claims, I decline to make any order for the recovery of the filing fees for both parties.

In off-setting these amount, $\$2,550.00 - \$959.99 = \$1,590.01$, I find that the Landlord is entitled to a monetary order under section 67 for the balance due of \$1,590.01.

Conclusion

The Landlord is granted a monetary order for \$1,590.01.
The Landlord may retain the security deposit.

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: November 07, 2011.

Residential Tenancy Branch