



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and a cross-application by the landlord for a monetary order and an order permitting him to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began in July 2005 at which time the tenant paid a total of \$1,600.00 in security and pet deposits and that it ended on October 1, 2009. They further agreed that rent was set at \$1,750.00 per month. I address the claims of the parties and my findings around each as follows.

1. **Tenant's claim: Double security and pet deposits.** The tenant seeks to recover double her security deposit. She testified that she gave her forwarding address to the landlord on September 30, 2009 by mailing it to him via regular mail. The landlord testified that he did not receive the letter and stated that he was unaware of the tenant's forwarding address until he received her application for dispute resolution and notice of hearing, at which time he immediately filed his claim to retain the deposits. Section 38(1) of the Act provides that the landlord must return the security and pet deposits or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If he fails to do so, he is liable under section 38(6) for double the amount of the deposits. In order to establish her claim for double the deposits, the tenant must prove that the landlord received her forwarding address more than 15 days before having filed his claim to retain them. I am not satisfied that the landlord received the letter which she allegedly sent via regular mail. I find it unlikely that the tenant would

have provided her forwarding address in 2009 and waited for almost 2 years before pursuing the return of the security deposit after having triggered the landlord's obligation to deal with the deposit. I find that the landlord did not receive the forwarding address until he received the tenant's application for dispute resolution. I therefore find that the tenant is not entitled to an award of double the deposits and I dismiss the claim.

2. **Tenant's claim: Recovery of filing fee from previous dispute resolution hearing.** In 2008 the parties were involved in a dispute in which the tenant was successful. In his decision, the dispute resolution officer stated that the tenant was entitled to recover the \$50.00 filing fee she had paid to bring the claim and permitted her to deduct \$50.00 from a future rental payment. The tenant did not make this deduction and now seeks a further award. As this sum has already been awarded, I am unable to make a second award and accordingly I dismiss the claim.
3. **Landlord's claim: Loss of income.** The landlord seeks to recover lost income for half of the month of October 2009, claiming that the tenant abandoned the rental unit with no notice. The parties agreed that on or about August 16, 2009 the landlord gave the tenant a written notice, not on a Residential Tenancy Branch form, advising her that her tenancy would be ending on September 30, 2009. The landlord took the position that because the tenant did not sign and return the letter, he did not realize that she had accepted the end of the tenancy. I find that because the landlord gave the tenant an illegal eviction notice upon which she acted, he is barred from claiming damages against her for losses suffered by acting upon the notice. I dismiss the claim.
4. **Landlord's claim: Unpaid utilities.** The landlord seeks to recover \$462.61 in utility charges which he claims were left unpaid at the end of the tenancy. The landlord claimed that there were a total of \$462.61 in utilities owing at the end of the tenancy while the tenant claimed that she made her final utility payment on September 5, 2009 and provided a cancelled cheque for that amount. The landlord's invoices show that BC Hydro charges for the period from August 14 – October 14 were not billed until October 14 and I find that the tenant could not have paid these charges in September as they had not yet been billed. The BC Hydro bill is for a 62 day period. The tenant occupied the unit for 48 of those days and I find that she is responsible for \$47.43 of the October 14, 2009 bill. The landlord's Terasen Gas invoice for \$55.54 shows that the meter was read on September 11, 2009, 6 days after the tenant made her utility payment. I find that the tenant could not have paid these charges on September 5 as the meter had not yet been read and I find that the landlord is entitled to recover the \$55.54 from that bill. I award the

landlord a total of \$102.97 in unpaid utilities. As for the invoices provided for the period prior to the tenant's September 5 payment, in the absence of records showing payments made by the tenant and the invoices to which those payments were applied, I find insufficient evidence to prove that the tenant has not already paid those charges and accordingly I dismiss that part of the claim.

5. **Landlord's claim: Filling nail holes.** The landlord seeks to recover \$300.00 as the cost of filling nail holes left in the walls at the end of the tenancy. The landlord claimed that there were an unreasonable number of holes in the walls while the tenant claimed that the number was reasonable. The landlord provided no photographic evidence of the walls and in the absence of such evidence, I am unable to determine whether or not the number of holes was reasonable. I therefore find insufficient evidence to prove that the walls were damaged beyond what may be characterized as reasonable wear and tear and I dismiss this part of the claim.
6. **Landlord's claim: Repair of damage to doors, trim and baseboards.** The landlord seeks to recover \$820.00 as the cost of repairing damage to doors, the moulding around the doors and the baseboards of the unit, claiming that these were damaged by the tenant's dog. The landlord performed the repairs himself as he is a professional carpenter and charged a rate of \$35.00 per hour for 18 hours of labour. The landlord provided a photograph of damaged trim and of a damaged door. The tenant insisted that there was absolutely no damage in the unit and claimed that her small dog was not in the habit of chewing trim or baseboards. I accept that there was some damage to the unit and I find that the tenant must be held responsible for the cost of repairing that damage. However, there are only 2 photographs of the damage and although a condition inspection report was prepared by the landlord, the tenant did not participate in the inspection because the landlord did not arrange a time for her to participate as is his obligation. As I have already found that the landlord should have known that the tenancy would be ending pursuant to his illegal notice, the landlord should have given the tenant 2 opportunities to participate in a condition inspection of the unit and should have provided that notice while the tenant was still in the residence. Although the landlord posted a notice of final opportunity to schedule a condition inspection on the door of the rental unit after the tenant vacated, I find that the tenant could not reasonably have been expected to have found this notice. As the tenant did not participate in the inspection, I give the report little weight. I find that an award of \$410.00 will adequately compensate the landlord for the cost of repairing the damage and I award him that sum.
7. **Landlord's claim: Cooktop replacement.** The landlord seeks to recover \$731.30 as the cost of replacing a glass cooktop which was damaged during the tenancy.

The tenant acknowledged that the cooktop was damaged, but claimed that it occurred when she placed a cold item on it and that she should not be held responsible. I find that the tenant should be held responsible for the damage to the cooktop as I am unable to find that it cracked during normal use. The landlord testified that the cooktop has not been replaced. As the cooktop is still able to be used for its intended purpose, I find that the landlord is entitled to recover a cost to reflect the depreciated value of the cooktop. I find that \$100.00 will adequately compensate the landlord and I award him that sum.

8. **Landlord's claim: Cleaning.** The landlord seeks to recover \$342.00 as the cost of cleaning the rental unit at the end of the tenancy. The landlord claimed that the rental unit had not been cleaned and that it took 19 hours to clean the unit, including all of the windows. The tenant insisted that she left the rental unit in good condition and provided an invoice dated May 4, 2009 for cleaning the windows. The landlord provided no photographs showing the condition of the unit and I find that the landlord has not met the burden of proving that the unit was unreasonably dirty. Accordingly I dismiss the landlord's claim.
9. **Filing fees.** Both parties seek to recover the filing fees paid to bring their applications. As the tenant has been wholly unsuccessful, I find that she must bear the cost of her filing fee. As the landlord has been partially successful, I find that the tenant should bear half the cost of his filing fee and I award him \$25.00.

Conclusion

The tenant's application is dismissed in its entirety. The landlord has been awarded \$637.97 which represents \$102.97 for unpaid utilities, \$410.00 for repairs, \$100.00 for the diminished value of the cooktop and \$25.00 for the filing fee. I order the landlord to retain \$637.97 from the \$1,600.00 pet and security deposits and the \$56.67 in interest which has accrued to the date of this judgment and I order the landlord to return the balance of \$1,018.70 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$1,018.70

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: December 15, 2011

Residential Tenancy Branch