



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a tenants' application for a Monetary Order for return of double the security deposit and a partial refund of rent and utilities. The landlords did not appear at the hearing. The tenant testified that the hearing documents were sent to each of the landlords at their service address, as it appears on the tenancy agreement, via registered mail on January 26, 2012. The tenant provided copies of the registered mail receipts as proof of service. The registered mail was unclaimed by the landlords.

Pursuant to section 90 of the Act, documents sent by mail are deemed to be received five days later, even if the recipient does not accept or pick up the registered mail. Based upon the evidence before me, I was satisfied the tenants have served the landlords with notification of this hearing and I proceeded to hear from the tenant without the landlords present.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit?
2. Are the tenants entitled to a refund of rent paid for December 19 – 31, 2011?
3. Are the tenants entitled to a refund of hydro and gas paid for December 19 – 31, 2011 from the landlords?
4. Are the tenants entitled to compensation from the landlords for hydro and gas used for the other rental unit on the property?

Background and Evidence

The one year fixed tenancy commenced August 15, 2009 and the tenants were required to pay rent of \$1,200.00 on the 1st day of every month. At the end of the fixed term the tenancy converted to a monthly tenancy. The tenants were required to put hydro and gas accounts in their name; however, in recognition of the two other rental units on the property, the written tenancy agreement provides that the landlords would pay 20% of the hydro and gas bills. The tenancy agreement provides that the tenants may deduct utilities owed by the landlords from rent payable.

The tenants paid a \$600.00 security deposit. The tenant submitted that the landlords did not prepare condition inspection reports.

The tenant testified that on November 30, 2011 the tenants gave written notice to end the tenancy effective December 31, 2011 or sooner and the tenants paid rent for December 2011.

The tenant submitted that the landlord asked the tenants to vacate earlier than the end of December 2011 to allow the landlord time to renovate the rental unit in preparation for their son moving in. The tenants agreed to permit the landlords to have access to the unit to do their renovations as they had mostly moved out. I heard that there was no discussion at that time about pro-rating the rent; however, the tenants requested that they be reimbursed for utilities consumed after December 18, 2011. The landlords proceeded to access the rental unit and then complained to the tenants that they had not sufficiently cleaned the unit. The tenants took the position that because the landlords' contractor had created dust from sanding wall and door frames. On December 26, 2011 the tenants returned to retrieve belongings stored in the garage and found the locks of the rental unit had been changed by the landlords.

The tenant testified that on January 5, 2012 the tenants sent a parcel to the landlords with the keys and garage remote control, along with a letter that provided the tenant's forwarding address. The parcel was sent registered mail but was unclaimed by the landlords. The tenant had failed to put a return address on the parcel and Canada Post recorded the item as being undeliverable. According to the tenant, Canada Post retained the letter and returned the key and remote to the tenant. The tenant did not submit a copy of the letter as he did not keep or take a copy for his records.

The tenants' monetary claims are as follows:

<u>Item</u>	<u>Amount</u>
Rent refund (Dec 19 – 31)	503.23
Hydro used by landlords (Dec 19 – 31)	69.87
Gas used by landlords (Dec 19 – 31)	165.86
Hydro for other rental unit (10% previous bill)	17.74
Gas for other rental unit (10% previous bill)	<u>34.18</u>
Total claim	\$ 1,990.88

The tenant explained that although the tenancy agreement provides that the landlord is responsible for 20% of the utilities, the tenants are only seeking recovery of 10% as one of the other rental units was vacant.

In addition to a written submission, the tenants provided copies of the following documents as evidence for this proceeding: the tenancy agreement; the December 2011 hydro bill, the December 2011 gas bill; registered mail receipts and tracking information.

Analysis

Based upon the evidence before me, I provide the findings and reasons with respect to the tenants' claims against the landlords.

Security deposit

In order to establish an entitlement to return of double the security deposit, the tenants must satisfy me that a forwarding address was given to the landlords in writing and the landlord failed to return the security deposit or file an Application for Dispute Resolution against it within 15 days. In this case, the tenants have not provided me with a copy of the letter sent to the landlord.

I find I am unable to conclude that the tenant gave the landlord a forwarding address in writing prior to making this application and I do not award the tenants double the security deposit. However, having heard the landlords did not perform condition inspection reports, the landlords' right to claim against the security deposit for damage has been extinguished under the Act. Therefore, I order the landlords to return the single amount of the security deposit.

Return of rent

The tenants had paid rent for December 2011 and moved the majority of their possession out by December 18, 2011. The tenants permitted the landlords to have access to the rental unit after December 18, 2011 to perform renovations but there was no agreement that the landlords would compensate the tenants for such access. Furthermore, the tenants were still using the garage for storage up until December 26, 2011. Therefore, I do not find the tenants have established an entitlement to receive a refund of rent from December 19, 2011 onwards under the provisions of the Act.

I accept the tenant's testimony that on December 26, 2011 the tenant attended the property and found the locks changed to the rental unit. Having heard the tenants had paid rent for December 2011, remained in possession of the keys after December 18,

2011 and had possessions in the garage, I find the tenants were still entitled to possession of the rental unit until December 31, 2011. Therefore, the landlords violated the Act by changing the locks to the rental unit and restricting their access.

As a result of the above violation, I find the tenants entitled to a rent abatement for the period of December 26, 2011 through December 31, 2011. The tenants are awarded a rent abatement of \$232.26 [$\$1,200.00 \times 6/31$ days].

Refund of utilities used by landlords

I accept the tenant's undisputed testimony that the landlords were permitted access to the rental unit starting December 19, 2011 for purposes of performing renovations. I accept the tenant's undisputed testimony that the landlords were using electricity and gas while accessing the unit and performing renovations. I find the tenants entitled to recover costs of utilities likely incurred by the landlords on the tenants' accounts.

The hydro bill for \$69.87 is for the period of December 14 to 31, 2011. I have estimated that the amount recoverable by the tenants is based upon a pro-ration starting December 19, 2011. Therefore, I have awarded the tenants \$57.54 [$\$69.87 \times 12/17$ days].

The gas bill for \$165.86 is for the period of December 14 to 31, 2011. I have estimated that the amount recoverable by the tenants is based upon a pro-ration starting December 19, 2011. Therefore, I have awarded the tenants \$136.59 [$\$165.86 \times 12/17$].

Refund of utilities used by other tenant

Upon review of the tenancy agreement, the tenants are permitted to deduct 20% of hydro and gas bills from monthly rent. The tenants are only seeking reimbursement of 10% of gas and hydro bills because one of the other units was vacant. I find the request for only 10% to be very reasonable.

Upon review of the hydro bill submitted by the tenants I accept that the tenant's claim for \$17.74 is based upon 10% of the hydro bill for the period ended December 13, 2011. Since this bill was received after the December 2011 rent was paid I find the tenants entitled to receive reimbursement of this cost from the landlords.

Upon review of the gas bill submitted by the tenants I accept that the tenant's claim for \$34.18 is based upon 10% of the gas bill for the period ended December 13, 2011. Since this bill was received after the December 2011 rent was paid I find the tenants entitled to receive reimbursement of this cost from the landlords.

Monetary Order

As the tenants were partially successful with this application I award the tenants one-half of the filing fee they paid for this application, or \$25.00.

Based upon the above awards, the tenants are provided a Monetary Order calculated as follows:

Security deposit	\$ 600.00
Rent abatement	232.26
Hydro – used by landlords	57.54
Gas – used by landlords	139.59
Hydro – for other rental unit	17.74
Gas – for other rental unit	34.18
Filing fee	<u>25.00</u>
Monetary Order for tenants	\$ 1,106.31

The tenants must serve the Monetary Order upon the landlords and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenants were partially successful in this application and have been provided a Monetary Order in the amount of \$1,067.60 to serve upon the landlords.

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: April 04, 2012.

Residential Tenancy Branch