



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and disputes an additional rent increase.

Both parties attended the conference call hearing and gave affirmed testimony. The tenant also called a witness who gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Is the tenant entitled to return of all or part of the pet damage deposit or security deposit?
- Is the tenant's application disputing an additional rent increase justified?

Background and Evidence

The parties agree that this fixed term tenancy began on June 1, 2011 and expired on December 1, 2011. The written tenancy agreement was revised and the term was extended to March 15, 2012, however the tenancy ultimately ended on January 29, 2012.

Rent in the amount of \$700.00 per month was payable at the beginning of the tenancy, in advance on the 1st day of each month and there are no rental arrears. The tenancy agreement was signed by the parties on June 1, 2011, a copy of which was provided for this hearing and it also states that the tenant was responsible for 1/3 of the utilities. Heat and electricity are not included in the rent, however water and sewer is included in the rent.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00, and no pet damage deposit was collected. No move-in or move-out condition inspection reports were completed.

In November, 2011 the parties amended the tenancy agreement to show that rent is \$750.00 per month in addition to 1/3 utilities, at which time the term of the tenancy was changed to expire on March 15, 2012. The tenant testified that the term was extended as a result of the conversation between the parties wherein it was agreed that the maximum length of time for the tenancy was till March 15, 2012 but that the tenant was free to give notice and end the tenancy earlier. The tenant further testified that before Christmas in 2011 the landlord told the tenant that the landlord wanted the landlord's son to move into the rental agreement. The parties agreed verbally to a month-to-month tenancy and on December 29, 2011 the tenant told the landlord that the tenant would be moving by the end of January, 2012.

The tenant's friend spent alot of time at the rental unit and moved in with the tenant at the end of October, 2011. The landlord wanted an additional \$50.00 per month for rent from September, 2011 to January, 2012. The tenant agrees that the tenancy agreement provides for an additional \$50.00 per month for additional occupants, and the tenant paid the landlord the extra \$50.00 per month from September, 2011 to January, 2012 and claims 2 month's recovery for the months of September and October, 2011, or \$100.00; the tenant's friend did not move into the rental unit until November 1, 2011.

The utilities are in the name of another tenant and this tenant was to pay the other tenant the 1/3 portion. The tenant agrees owing \$20.00 to \$70.00 for the utilities; the tenant gave the other tenant in the building \$100.00 for a previous bill which was \$80.00. The excess should be applied to any further bills that the tenant is responsible

for. Further, the tenant gave the landlord a phone number of the tenant's mother as a contact number.

The tenant also testified that the tenant went to the landlord's residence on December 27, 2011 and left a note on the doorstep which contained the tenant's forwarding address. The landlord has not returned any portion of the security deposit and the tenant did not authorize the landlord to keep any portion. The tenant claims recovery of the security deposit from the landlord.

The tenant's witness testified to being the friend that moved into the rental unit with the tenant. The witness did not live in the rental unit between September 1 and November 1, 2011 but moved in on November 1, 2011.

The witness also testified to being with the tenant on December 29, 2011 when the notice to end tenancy was delivered to the landlord.

The witness testified that the tenant and the witness spent 10 to 15 hours cleaning the rental unit before departing at the end of January, 2012, and that neither of them ever smoked in the rental unit.

The landlord testified that the rent was not increased until December, 2011. Further, the landlord did not receive the notice to end tenancy or a forwarding address from the tenant. The landlord's son moved into the rental unit on February 15, 2012 and does not pay rent, however the landlord claims \$1,125.00 in unpaid rent from the tenant, being \$750.00 for the month of January, 2012 and half of that for February, 2012.

The other tenants in the building have the utilities in their name. The landlord had to pay them this tenant's portion, which the landlord claims back from the tenant. The landlord provided copies of the utility bills, being Fortis Gas and BC Hydro covering the periods of November 10, 2011 to February 8, 2012. The landlord claims \$196.76 for unpaid utilities, being the amount the landlord paid to the other tenants.

The landlord also provided numerous photographs to illustrate debris left on the property by the tenant, as well as a fridge and oven in need of cleaning. The landlord spent 5 hours cleaning the rental unit after the tenant moved out and had to take debris to the local landfill. The landlord claims \$125.00 for cleaning, \$50.00 to retrieve the debris from the yard, \$10.00 for dump fees, and \$10.00 for gasoline to take the garbage to the local landfill.

Further, the tenancy agreement specifies no smoking in the rental unit, but the tiles in the bathroom ceiling needed to be replaced due to the tenant and the tenant's friend smoking in the bathroom at a cost of \$54.66 and \$50.00 for the landlord's time to install the ceiling tiles.

Analysis

Firstly, with respect to the tenant's application for return of the security deposit, the *Residential Tenancy Act* states as follows:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case, the tenant testified to leaving a note with the forwarding address on the landlord's doorstep but did not provide any testimony or evidence that the landlord received it. If the tenant had provided evidence to that effect, the landlord would be required to pay the tenant double the amount of the security deposit. I cannot find in the circumstances what day, or if the landlord received the tenant's forwarding address in writing.

The *Act* further states that a landlord's right to claim against a security deposit for damages is extinguished if the landlord fails to cause a move-out and a move-in condition inspection report to be completed with the tenant. In this case the parties did not complete either report, and therefore I must find that the landlord's right to claim against it for damages is extinguished.

The landlord's right to make a claim for damages is not extinguished, however, in order to be successful in a claim for damages the onus is on the claiming party to satisfy the 4-part test for damages:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts were made to mitigate, or reduce such damage or loss.

In this case, I have no way of determining the condition of the rental unit at the outset of the tenancy. The landlord has provided photographs to illustrate the condition of the rental unit after the tenant vacated, but did not provide any evidence to satisfy elements 1 or 2 in the test for damages. Therefore, the landlord's claims for ceiling tiles, installing ceiling tiles, cleaning, garbage retrieval, dump fees and gas to drive to the dump cannot succeed.

With respect to the landlord's claim for unpaid rent, I find that the tenant has not satisfied me that the parties meant anything other than what the amended tenancy agreement states; that the parties agreed to a new fixed term expiring on March 15, 2012. The tenant has further failed to satisfy me that the landlord received written notice of the tenant's intention to vacate the rental unit, and even if I were satisfied that the landlord received such notice, the tenant is bound by the tenancy agreement to honour the fixed term. The landlord's child moved into the rental unit on February 15, 2012, and I find that the rental unit was not available for rent from that time on, but the tenant is liable to the landlord for rent for January and half of February, 2012, in the amount of \$1,125.00.

The landlord claims \$196.76 for unpaid utilities. The onus is on the landlord to prove the amounts. The tenant did not dispute owing utilities but did not agree to the amount and stated that the other tenants were paid \$100.00 for an \$80.00 bill and the other \$20.00 should be applied to any unpaid bills. The landlord did not dispute that testimony, but no one provided any testimony as to when that payment was made. The only bills provided by the landlord for this hearing cover the periods from November 10, 2011 to February 9, 2012. If I were to accept the testimony of both parties, and I have no reason to not accept it, I must find that the landlord is owed \$176.76 for utilities.

With respect to the tenant's application disputing an additional rent increase, the tenant testified to paying the additional \$50.00 per month from September, 2011 to January, 2012, however the landlord testified that the additional amount wasn't collected until December, 2011. The onus is on the claiming party to prove the claim, and the tenant testified to having copies of money orders but did not provide any for this hearing. I find that the tenant has failed to establish that any additional rent was given to the landlord prior to December, 2011.

In summary, I find that the landlord is owed \$1,125.00 for unpaid rent, \$176.76 for unpaid utilities. The tenant is entitled to recovery of the security deposit in the amount of \$350.00. The landlord's application for damages and cleaning are dismissed. The tenant's application disputing an additional rent increase is dismissed. Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee from the other.

The *Residential Tenancy Act* states that the amounts may be set off from one another, and I order the tenant to pay to the landlord the difference in the amount of \$951.76.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$951.76.

This order is final and binding on the parties and may be enforced.

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 12, 2012.

Residential Tenancy Branch