



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 the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant; her interpreter and the landlord.

During the hearing the tenant identified that she had provided additional evidence to the Residential Tenancy Branch on May 22, 2012 consisting of transaction records related to her claim for the reimbursement of water utilities. The tenant confirmed she did not provide this evidence to the landlord. I advised both parties that I would not be considering this evidence, as the landlord had not received it.

In addition the landlord confirmed that she did not provide the tenant with any of the evidence that she considered the tenant would have such as emails between to the two parties. Again, I advised both parties that I would not consider this evidence.

However, both parties had provided into evidence copies of two tenancy agreements and at least two of the addendums attached to each of the years of the tenancy. Both parties acknowledge the content of all three of the addendums submitted by the tenant and provided no objection for me to consider all three addendums.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of double the balance of the security deposit and to recover utility costs paid by the tenant, pursuant to Sections 1, 19, 20, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

From the documents submitted the tenancy began on March 28, 2009 as a 1 year fixed term tenancy for a monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$750.00 paid on March 31, 2009. There is no indication as to what was to happen at the end of the fixed term, however the parties signed a new tenancy agreement in April 2010 for a new 1 year fixed term tenancy. No further tenancy agreements were signed.

The tenancy ended by mutual agreement when the tenant moved out of the unit on February 25, 2012, one month prior to the end of the term of the third addendum.

In each year of the tenancy the parties signed a new addendum to the tenancy agreement with the following clause:

The monthly rent will be \$1,500.00. At the end of the lease (March 30, 2010, March 30, 2011, & March 30, 2012 respectively) the landlord (landlord representative) and the tenant will perform an inspection and if there is no requirement to bring the home back to the move-in condition, then the tenant will be reimbursed (\$1,200.00; \$1,200.00 & \$600.00 respectively). However, if modifications are necessary to bring the home back to move-in condition, then the cost of the modifications will be borne by the tenant from the (\$1,200.00; \$1,200.00; \$600.00 respectively) owed the tenant and any remaining dollars will be reimbursed the tenant.

The landlord testified that these clauses were added to each year of the agreement because she had concerns about renting the rental unit to a large family and it was meant as a rebate incentive to ensure the tenant took care of the property.

The parties agree that the tenant provided the landlord with forwarding mail instructions prior to the end of the tenancy and that those instructions were to use the rental unit address and the tenant would have Canada Post redirect her mail to her new address. The landlord also stated that she had the tenant confirm this arrangement after the end of the tenancy as well.

The parties agree the landlord provided the tenant with a cheque in the amount of \$912.00 on April 2, 2012. The landlord testified that this amount included the full return of the tenant's security deposit of \$750.00 plus the amount of \$550.00 (for the reimbursement amount of \$600.00 less \$50.00 for the period of 11 months for the 3rd period of the tenancy) less charges for carpet cleaning of \$207.00 and blinds of \$181.00.

The parties agree that after the 1st year of the tenancy the landlord reimbursed the tenant \$1,100.00 only because there was some damage to a wall and at the end of the 2nd year the full \$1,200.00.

The landlord submits that she wasn't able to return the deposit within 15 days partly because her agent had been away and partly because she was waiting to see how much the cleaning and blinds was going to cost and receive the invoices.

The tenant also seeks return of water utility charges that she paid throughout the tenancy because the tenancy agreement she signed at the start of the tenancy states that water is included in the rent.

The landlord submits that while they were negotiating via email the rental agreement they had agreed that water would not be included in the rent. The landlord testified that the only reason it was checked off was an error made by her agent who has additional properties that do include water utilities.

The landlord also pointed out that the addendum includes a clause that states the utilities will be the responsibility of the tenant (Gas Company named and City named). The tenant states that she paid the utilities for the duration of the tenancy but it was recently pointed out to her that water had been included in the rent according to the original agreement. The tenant seeks \$541.37 for the payment of this utility.

Analysis

Section 1 of the *Act* defines a security deposit as money paid by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property. Section 19 goes on to say a landlord must not require or accept a security deposit that is greater than the equivalent of $\frac{1}{2}$ month's rent payable under the tenancy agreement.

Despite the landlord's assertion that the "reimbursement" of \$1,200.00 for each of the first two years of the tenancy and the \$550.00 for the final year was an "incentive to ensure the tenant took care of the property" and the listing of rent in the amount of \$1,500.00 in the tenancy agreement, I find, in effect, that rent was \$1,400.00 per month and monies the landlord was charging the tenant (\$100.00 per month for the 1st two years of the tenancy and \$50.00 per month in the final year) was being held as security for liabilities or obligations of the tenant respecting the condition of property at the end of each year.

Further by the landlord's own testimony, in the first year she did not return \$100.00 to pay for repairs to the rental unit and she withheld \$388.00 for carpet cleaning and blinds at the end of the tenancy. Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged except for reasonable wear and tear. If the tenant fails to do so then the tenant has a liability to the landlord to restore the unit to the point of compliance.

For these reasons, I find all of this money collected under this clause of the addendums constitutes a security deposit. In total and over the course of the entire tenancy I find, therefore, that the landlord collected \$3,700.00 for a security deposit and has returned the security deposit as follows: \$1,100.00 – after March 31, 2010; \$1,200.00 – after March 31, 2011; and \$912.00 – April 2, 2012.

At the end of the tenancy (February 29, 2012) I find the landlord was holding a security deposit of \$1,400.00 consisting of the \$100.00 that she did not return to the tenant after March 31, 2010; the \$550.00 collected over the period April 1, 2011 to February 2012; and the original \$750.00 collected.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the testimony of both parties, I accept the landlord failed to return any portion of the security deposit, other than that she had returned at the end of each of the fixed terms, or even what she understood to be the security deposit to the tenant or file an Application for Dispute Resolution to claim against the deposit in compliance with Section 38(1) and as such the tenant is entitled to double the amount of the security deposit.

In relation to the tenant's claim for water utility costs, I accept the tenant's position that the water was included in the original tenancy agreement signed by the tenant and the landlord's agent, however I note that the addendum did identify that utilities provided by the city were the tenant's responsibility.

As these two terms seem to be contradictory and despite any negotiations that had occurred prior to signing the agreement, I find the requirement for the tenant to pay for utilities is an unenforceable term of the tenancy agreement. Having found this I also note that the tenant has failed to provide any evidence, that I can consider, that establishes the value of the payments she has made towards water utilities and as such, I dismiss this portion of her claim.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,938.00** comprised of \$2,800.00 for double the amount of security deposit held at the end of the tenancy and the \$50.00 fee paid by the tenant for this application less the amount of \$912.00 already returned to the tenant.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: May 31, 2012.

Residential Tenancy Branch