



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double her security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application. .

The Tenant affirmed that she served the Landlord with the hearing documents and her evidence via registered mail on June 13, 2012. Canada Post receipts were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord was sufficiently served notice of this proceeding, in accordance with the Act, and I proceeded in his absence.

Issue(s) to be Decided

1. Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant submitted evidence which included, among other things, copies of: a dishonoured NSF cheque issued by the Landlord, the tenancy agreement, Canada Post receipts, the Tenant's written statement, an agreement entered into by both the Tenant and Landlord on May 1, 2012, a utility bill, and a mutual agreement to end tenancy signed May 1, 2012 ending the tenancy effective May 31, 2012.

The tenancy agreement began on September 1, 2011 and was for a fixed term ending September 2012. Rent began at \$1,700.00 per month and effective January 1, 2012 the rent reduced to \$1,650.00 per month. On September 4, 2011 the Tenant paid \$875.00 as the security deposit.

The Tenant stated that on April 28, 2012 a flood occurred in the rental unit whereby water from the upstairs bathroom came gushing down through the ceiling and an electrical fixture into the second floor living area. She stated that her and her sister resided in the rental unit with five small children and that as a result of this flood they were left without use of the only full bathroom, the kitchen and the living room.

The Tenant advised that she met with the Landlord on May 1, 2012 to discuss the implications of the restoration work and it was during that meeting that the Landlord kept

insisting that she pay the full rent that was due May 1, 2012. She said he told her that this would leave him time to deal with his insurance company and get reimbursed for the cost of repairs, the Tenant's rent, and her moving costs.

The Tenant reference the May 1, 2012 agreement signed by the Landlord provided in her evidence. She noted that he agreed to return her May 1, 2012 rent of \$1,650.00, return her \$825.00 security deposit, pay her \$400.00 in moving expenses, and cover the cost of her utility cancellation fees. On the same date, May 1, 2012, the Landlord also signed a mutual agreement to end the tenancy and insisted that the end date be listed as May 31, 2012, and told the Tenant that this was to ensure his insurance company would refund her rent.

The Tenant confirmed that they were not able to live in the unit immediately following the flood and had vacated by April 29, 2012, moving most of their possessions into the garage until they could get access to a truck and find new accommodation. She stated that their possessions were moved out of the garage by May 15, 2012.

The Tenant stated that she had several conversations with the Landlord attempting to collect the money owed when he finally gave her a cheque for the return of her security deposit dated June 13, 2012. This cheque was returned NSF therefore she is seeking return of double her deposit (2 x \$875.00), plus May rent of \$1,650.00, plus \$454.76 for the cost to cancel her internet and cable contract as her new place came with cable, and \$400.00 to cover the cost of her move. The Tenant clarified that she was able to borrow a truck to move her possessions therefore the only cost she had was for gas. She confirmed she did not submit copies of the gas receipts.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her evidence.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 of the Act stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and

housing standards required by law, and makes the unit suitable for occupation by a tenant.

In this case the evidence supports that a flood occurred on April 28, 2012 rendering the rental unit uninhabitable until repairs could be completed. Therefore I find the tenancy ended April 29, 2012, when the Tenant moved out of the unit, pursuant to section 44 of the Act.

Based on the aforementioned, I find the Landlord is in breach of section 32 of the Act, as he did not provide a rental unit that was suitable for occupation, and he still demanded that the Tenant pay rent for a unit she was not able to occupy. Accordingly, I award the Tenant **\$1,650.00** for the return of May 1, 2012 rent.

As noted above this tenancy ended April 29, 2012 and the Landlord was provided with the Tenant's forwarding address June 13, 2012 when she filed her application for dispute resolution. The Landlord subsequently provided the Tenant with a cheque for the return of her security deposit dated June 13, 2012; however this cheque was returned NSF.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than June 14, 2012. The Landlord failed to return the deposit as his payment was returned NSF.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find that the Tenant has met the burden of proof and I award her return of double her security deposit plus interest in the amount of **\$1,750.00** (2 x \$875.00).

The evidence further supports the Landlord mutually agreed to end the tenancy effective May 31, 2012 and to reimburse the Tenant for moving costs plus costs to disconnect and reconnect hydro and gas.

The Tenant confirmed the only moving costs she suffered were for the cost of gas for a truck she borrowed and she did not provide copies of the gas receipts. Therefore, I find there to be insufficient evidence to meet the burden of proof to claim for moving costs and this portion of the claim is dismissed without leave to reapply.

The Tenant is seeking to recover the cost incurred to cancel her internet and cable contract. The Landlord had agreed to cover the costs incurred to reconnect hydro and gas not internet or cable. The tenancy agreement did not provide services for internet or cable and the Tenant entered into a contract for these services on her own initiative. Therefore, I find the Tenant is claiming for costs that cannot be assumed by the Landlord and her claim for \$454.76 is dismissed, without leave to reapply.

The Tenant has primarily been successful with her application, therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$3,450.00** (\$1,650.00 + \$1,750.00 + \$50.00). This Order is legally binding and must be served upon the Landlord.

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: August 15, 2012.

Residential Tenancy Branch