



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MNR, FF.

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for rent, loss of income, unpaid utilities, bailiff costs, and the filing fee and to retain the security deposit in satisfaction of his claim. The tenant applied for the return of her security deposit and a portion of the utility bill paid by her. The tenant also applied for the return of furniture that is in the possession of the landlord and for compensation for the value of her possessions and the stress endured by her that was allegedly caused by the landlord.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for rent, loss of income, unpaid utilities, bailiff costs and the filing fee? Is the tenant entitled to the return of her security deposit and to compensation?

Background and Evidence

The tenancy started on September 01, 2010 and ended on June 13, 2012 when the tenant was evicted by a bailiff, pursuant to an order of possession granted to the landlord.

The rental unit consists of a house which houses a smaller rental unit in the lower level. The tenant, along with her four teenage children, occupied the major portion of the house which was approximately 2,000 square feet. A single tenant rented the smaller unit which was 600 square feet in area.

The landlord testified that rent was \$1,500.00 but he reduced it by \$200.00 to accommodate the cost of utilities for the smaller rental unit. The tenant would then be required to pay the complete utility bill for both suites.

The tenant argued that the rent was \$1,300.00 as advertised. She agreed that the rent did not include utilities but she argued that she was not responsible for the cost of utilities for the smaller suite. The tenant paid for gas for the entire house, while the landlord paid the hydro as the tenant did not transfer it to her name.

The landlord filed copies of utility bills. The tenant agreed that she owed utilities, but stated that she had paid for the usage of gas by the tenant of the smaller rental unit and was claiming reimbursement.

On May 03, 2012, the landlord was granted an order of possession effective May 31, 2012. The tenant did not move out on the effective date and the landlord enforced the order in the Supreme Court and hired a bailiff to remove the tenant. The landlord is claiming the cost of registering the order in the Supreme Court, the cost of bailiff services and for the cost of transportation by ferry to the rental unit.

On June 13, the tenant walked through the unit with the bailiff and informed him of what items she would be removing herself. The remainder of the tenant's belongings were stored by the landlord. The tenant contacted the landlord about three weeks later and he told her that she should pay the outstanding rent prior to collecting her belongings.

I informed the landlord that he must return the tenant's belongings and he agreed to do so. However, the tenant stated that she did not want or need her belongings except for some lawn chairs. The landlord agreed to allow the tenant to pick up these items. The landlord admitted that he had sold one item for \$10.00, had disposed of some items and had given away some items to charity.

The tenant has filed a list of items that she is claiming compensation for. The tenant also claimed \$5,000.00 for stress brought on by the actions of the landlord. During the hearing the tenant withdrew this claim.

The landlord testified that the rental unit was left in such a poor condition that the unit could not be rented in July due to the amount of work needed to restore it to a condition in which it could be rented. The landlord stated that as of the date of the hearing he was still completing the work that needed to be done. The landlord stated that he found a tenant for August 01, and is claiming rent for June and loss of income for July.

The landlord is claiming the following:

1.	Rent for June 2012	\$1,355.00
3.	Supreme court filing fee	\$120.00
4.	Cost of Bailiff services	\$2,612.14
5.	Ferry Transportation	\$48.30
6.	Utility bill	\$2,949.22
7.	Filing fee	\$100.00
	Total	\$8,539.66

The tenant is claiming the following:

1.	Security Deposit	\$650.00
3.	Furniture and miscellaneous items	\$1,985.00
4.	Stress	\$5,000.00
	Total	\$8,435.00

Analysis

Landlord's application:

1. Rent for June 2012 - \$1,355.00

The tenant agreed that she did not pay rent for June and therefore I find that the landlord has established his claim for rent in the amount of \$1,355.00.

2. Loss of income for July - \$1,355.00

Residential Tenancy Policy Guideline #3 speaks to claims by the landlord for loss of income. This guideline states that at the end of a tenancy if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. Based on the testimony of both parties, I find that the tenant left the unit in an un-rentable condition and that the landlord suffered a loss of income due to the condition of the rental unit. Accordingly, the landlord is entitled to the loss of income he suffered for the month during which he completed the repairs.

The landlord found a tenant for August 01, 2012, even though he stated that he is still in the process of finishing the repair work. I find that the landlord is entitled to the loss of income he suffered in July in the amount of \$1,355.00.

3. Supreme court filing fee - \$120.00
4. Cost of bailiff services - \$2,612.14

The landlord was granted an order of possession with an effective date of May 31, 2012. The tenant did not move out by that date. The landlord hired a bailiff and the tenant was evicted on June 13, 2012. I find that had the tenant moved out on the effective date of the order, the landlord would not have incurred the additional expense of hiring a bailiff. Therefore, I find that the landlord is entitled to both the Supreme Court filing fee and the cost of the bailiff services.

5. Ferry Transportation - \$48.30

The landlord chooses to live at a distance from the rental unit and transportation to the unit is the landlord's cost of doing business. Therefore, I find that the tenant is not responsible for the cost of transportation.

6. Utility Bill - \$2,949.22

The parties have agreed to the following facts. The square footage of the smaller suite is 600 while that of the tenant's suite is 2000. The tenant's family consisted of five persons while the smaller suite was occupied by a single person. The landlord filed copies of the utility bills. Based on the square footage and the number of occupants per suite, I find that the prorated cost of the utilities utilized by the smaller suite is approximately \$147.45. Therefore the tenant owes the landlord the balance of amount of the total bill which is \$2,801.77.

7. Filing fee - \$100.00

The landlord has proven most of his claim and is therefore entitled to the recovery of the filing fee.

Overall the landlord has established a claim of:

1.	Rent for June 2012	\$1,355.00
3.	Supreme court filing fee	\$120.00
4.	Cost of Bailiff services	\$2,612.14
5.	Ferry Transportation	\$0.00
6.	Utility bill	\$2,801.77
7.	Filing fee	\$100.00
	Total	\$8,343.91

Tenant's application:

1. Security Deposit - \$650.00

The tenant is entitled to the return of the security deposit.

2. Gas for smaller suite - \$800.00

Based on the documents filed by the landlord, the parties agreed that the average cost of gas was \$109.00 per month. Based on the square footage and number of occupants of the suites, I find that the portion that is the responsibility of the smaller suite is approximately \$5.44 per month. The tenant paid this bill for 21 months and is therefore entitled to be reimbursed in the amount of \$114.24 which is the portion of the cost that the occupant of the smaller suite is responsible for.

3. Furniture and miscellaneous items - \$1,985.00

Based on the testimony of both parties, I find that the landlord held the tenant's possessions and requested \$1,000.00 from her before he released these items. The landlord disposed of some items, gave some to charity and sold one item for \$10.00. The landlord still has the tenant's lawn chairs which he must return to the tenant.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award nominal damages which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Based on the sworn verbal testimony and documentary evidence filed by both parties, I award the tenant a minimal award of \$200.00 towards her claim for the cost of her possessions that were disposed off by the landlord.

4. Stress - \$5,000.00

During the hearing, the tenant withdrew her claim for \$5,000.00 for stress.

Overall the tenant has established the following claim:

1.	Security Deposit	\$650.00
3.	Furniture and miscellaneous items	\$200.00
4.	Stress	\$0.00
	Total	\$964.24

The landlord has established a claim of \$8,343.91 and the tenant has established a claim of \$964.24. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$7,379.67 which consists of the difference between the established claims of both parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$7,379.67. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$7,379.67**.

I also order the landlord to return the tenant's lawn chairs and any other property that is currently in the landlord's possession.

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 14, 2012.

Residential Tenancy Branch