



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed December 14, 2012: MNDC, MNSD, FF, O

Landlord's application filed January 3, 2013: MNR, MNDC, FF, O

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks compensation for damage or loss under the Act, regulation or tenancy agreement; return of the security deposit; and recovery of the filing fee from the Landlord.

The Landlord seeks a monetary order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; and recovery of the filing fee from the Tenant.

It was determined that each party served the other with their respective Notice of Hearing documents.

The Landlord provided the Tenant with copies of her documentary evidence by registered mail, which was returned to the Landlord. The Tenant testified that his post office box is 15 miles away and that by the time he got to the Post Office, the documents had already been returned to the Landlord. The Tenant was anxious not to miss another day's work. The Landlord's documentary evidence was described to the Tenant and he stated that he wished to go ahead with the Hearing.

The Landlord acknowledged receipt of the Tenant's documentary evidence.

Preliminary Matters

On their Applications for Dispute Resolution, both parties ticked off the box indicating that they were seeking "other" relief but neither party provided details on their Application for Dispute Resolution with respect to what other relief they were seeking. Therefore, this portion of their applications is dismissed.

It is important to note that on December 21, 2012, the Tenant provided documentary evidence, including a request that the costs for serving the Landlord by registered mail and photocopying charges. However, the Tenant did not amend his Application for Dispute Resolution in accordance with the provisions of the Rules of Procedure. In any case, there is no provision in the Act for recovering these expenses.

Issues to be Decided

1. Is the Tenant entitled to double the amount of the security deposit?
2. Is the Tenant entitled to compensation for a day's lost wages?
3. Is the Landlord entitled to a monetary award for loss of revenue for the month of September?
4. Is the Landlord entitled to compensation for repairs to a water line, plumbing and a hole in the wall at the rental unit?

Background and Evidence

The rental unit is an older model manufactured home. Monthly rent was \$700.00, due on the first day of each month. The Tenant was responsible for paying utilities. The Tenant paid a security deposit in the amount of \$350.00 on October 10, 2009. No Condition Inspection Report that complies with the requirements of Part 3 of the regulation was completed at the beginning or the end of the tenancy.

The Landlord testified that the Tenant gave his notice to end the tenancy by telephone on July 31, 2012, effective August 31, 2012. The Tenant testified that he also hand delivered his written notice to end the tenancy to the Landlord On July 31, 2012, when he paid his rent for August. A copy of the Tenant's notice to end the tenancy was provided in evidence.

The Landlord testified that the Tenant didn't move out of the rental unit until the middle of September, 2012. She stated that the Tenant left garbage in the rental unit and left the door wide open. The Landlord said that the Tenant did not return the key to the rental unit.

The Tenant testified that he cleaned the rental unit and moved out on August 31, 2012. He stated that the Landlord came to the rental unit on August 31, 2012, to do a walk through so he could get his security deposit back, but the Landlord would not return it to him. The Tenant stated that the Landlord's daughter and another man were also with the Landlord. The Tenant stated that he actually moved out earlier in August and was paying for two rental units which is why he wanted his security deposit back as soon as possible.

The Tenant testified that he sent his forwarding address in writing to the Landlord on October 2, 2012, by registered mail. A copy of the letter was provided in evidence. He stated that the Landlord replied by sending him a letter on October 9, 2012, indicating that she felt he owed her \$2,409.30 and that she was keeping the damage deposit in partial recovery of that amount. A copy of the Landlord's letter dated October 9, 2012, was provided in evidence. The Tenant seeks a monetary award in the amount of **\$700.00**, representing double the amount of the security deposit.

The Tenant stated that he drives a truck for a living and that he had to take a day off work to attend the Hearing. The Tenant seeks a monetary award in the amount of **\$489.18** for loss of wages. The Tenant provided a copy of a pay slip, which he described as a "random day" showing his normal wages.

The Landlord testified that the tenancy agreement included a term that the Tenant must not unplug the power to the heat tapes that surrounded the underground water pipes. She stated that contrary to the tenancy agreement, the Tenant unplugged the heat tapes causing the pipes to leak. She stated that the water line originates under the rental unit and that the neighbouring trailers tap into the Tenant's water line. Therefore, when the pipes cracked and the water pressure went down, all of the trailers were affected. The Landlord stated that it cost **\$1,000.00** for digging down to the damaged pipes and another **\$559.30** to repair the damage. The Landlord seeks to recover these costs from the Tenant. The Landlord provided copies of invoices in evidence.

The Tenant testified that he does not recall signing a tenancy agreement, but stated that he might have. He said that he never received a copy of any tenancy agreement at the beginning of the tenancy and that he never knew for a long time what the eight inches of line sticking out of the wall was for.

The Tenant stated that the first winter he was living at the rental unit, his hydro bills were astronomical. He said he asked the Landlord why that would be and she said it shouldn't be that much. The following winter, he noticed the same thing so he asked her what the plug-in was for. This time, the Landlord replied that she wasn't sure and that it may have something to do with the addition for the washer/dryer. The Tenant stated that he asked the Landlord several times over three years and never got a clear response. The Tenant phoned hydro, who replied that historically his trailer's bills are always high in the winter. Hydro said they were not allowed to tell him what the other trailers on the site were paying for hydro.

The Tenant testified that the Landlord told him in mid-March or April that he could unplug the cord. He submitted that the Landlord did not think he was smart enough to

realize that he was paying to keep the other 5 or 6 trailers' pipes from freezing. The Tenant submitted that the lines burst in August, not in the winter.

The Landlord stated that every trailer has its own heat tape, but the main water line is buried under the rental unit. If the Tenant unplugs the heat tape for his trailer, then all of the other trailers are affected; however, the other trailers pay their own hydro to keep their lines clear. The Landlord stated that she thought the lines were about 30 years old, but she was not certain.

The Landlord stated that the Tenant damaged a wall in the rental unit, which cost her **\$150.00** to repair.

The Tenant denied damaging any walls and stated that the trailer was 30 years old and in poor shape when he moved in, with: no doors on a closet; insulation showing; molding missing; holes in the lino floor; and "little damages all over the place". The Tenant stated that the Landlord owns many rental units in the area and that she does not do any upkeep. He stated that he told the Landlord that he wanted to move to a place with more green space for his grandchildren and that the Landlord tried to rent him one of her houses, but they were all dilapidated. The Tenant provided photographs of other rental units that the Landlord owns.

The Landlord did not dispute that the photographs depicted her rental properties.

Analysis

Regarding the Tenant's Application

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Based on the testimony and documentary evidence provided, I find that the Landlord received the Tenant's forwarding address in writing by registered mail sent October 2, 2012. The Landlord responded by providing the Tenant with a letter dated October 9, 2012, stating that she would not return the security deposit. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did

the Landlord file for dispute resolution against the security deposit within 15 days. In fact, her Application for Dispute Resolution filed January 3, 2013, (some 2 ½ months later) does not include a request to keep the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the security deposit, in the amount of **\$700.00**.

There is no provision in the Act for recovering lost wages in order to attend Dispute Resolution. This portion of the Tenant's application is dismissed.

The Tenant has been largely successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Regarding the Landlord's application

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

This is the Landlord's claim for damage or loss under the Act, regulation or tenancy agreement and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different 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 Tenant 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 Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I have carefully considered the evidence of both parties with respect to the Landlord's claim for damages. I find that the Landlord has not met the burden of proof for the following reasons:

1. The Act requires a landlord to prepare a Condition Inspection at the beginning and at the end of a tenancy. There was no Condition Inspection Report that complies with the requirements of Part 3 of the regulation, either at the beginning or at the end of this tenancy. Section 21 of the regulation provides that a Condition Inspection Report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless the landlord or tenant has a preponderance of evidence to the contrary. I find, without the Condition Inspection Reports or evidence that the Tenant caused damage to the rental unit as alleged, the Landlord has failed to prove part one and two of the test for damages with respect to her claim for the cost of repairing the walls.
2. Based on the testimony and photographs provided by the Tenant, I find it probable that the Landlord did little to no maintenance at the rental property, contrary to the provisions of Section 32 of the Act. The normal useful life for plumbing fixtures varies from 15 years for faucets to 25 years for sanitary systems, storm systems and metal culverts. The water pipes were at least 30 years old and the Landlord provided no evidence that they had been regularly maintained. The Landlord did not have the pipes repaired until August, 2012, which is months after the time that she alleges the pipes leaked and the occupants of the trailers noticed a change in water pressure. I find that the Landlord has not provided sufficient evidence to prove parts 1, 2 or 4 of the test for damages with respect to her claim for the cost of repairs to the pipes.
3. Likewise, I find that the Landlord has not proven her claim for loss of revenue for the month of September, 2012. The Landlord did not prepare a Condition Inspection Report at the end of the tenancy which would indicate the date that the rental unit was vacant. The Tenant provided a copy of his letter providing the Landlord with his notice to end the tenancy. The letter indicates "It is very important to me that the above unit is clean and my damage deposit returned as renting 2 units from 2 different people is costing a lot of money." I find on the balance of probabilities that the Tenant gave the Landlord vacant possession of the rental unit on July 31, 2012. Therefore, I find that the Landlord is not entitled to loss of revenue for the month of September, 2012.

For the reasons stated above, the Landlord's application is **dismissed in its entirety**.

Conclusion

The Landlord's application is **dismissed without leave to reapply**.

I hereby provide the Tenant with a Monetary Order in the amount of **\$750.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and 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: March 28, 2013

Residential Tenancy Branch

