



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes CNC, CNL, CNR, MNR, MNDC, MNSD, OPR, OPC, OLC, RP, PSF, LRE, OPT, AAT, LAT, RR, FF

Introduction

This hearing was reconvened following a hearing on January 22, 2013 and an interim Decision dated January 22, 2013. The following Orders remain for consideration at this reconvened hearing:

For the Landlord:

1. An Order to retain all or part of the security deposit – Section 38; and

For the Tenant:

1. A Monetary Order for the cost of emergency repairs – Section 67;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for the return of the security deposit – Section 38;
4. An Order to recover the filing fee for this application - Section 72; and
5. Other.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord seeks to amend its original application to include claims for damages to the unit. The Tenant does not consent to the amendment but does not object to the Landlord making a future separate application for dispute resolution.

Section 2.5 of the Rules provides that an amendment to the application may be made without consent if the dispute resolution proceeding have not commenced. Given the lack of consent by the Tenant and considering that the amendment comes in after the

proceedings were commenced in January 2013, I find that the Landlord may not amend the application. In considering whether or not to provide leave to the Landlord to reapply, I note that some of the damages to be claimed may be in relation to matters in dispute at these proceedings. I therefore give the Landlord leave to reapply for damages only in relation to matters that are not considered below.

Issue(s) to be Decided

Is the Landlord entitled to retain all or part of the security deposit?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant states that they are not seeking compensation in relation to emergency repairs as no emergency repairs were undertaken by the Tenants.

The Tenant states that at the beginning of the tenancy there was only a simple handwritten agreement but that the Parties orally agreed that the Tenant would pay \$85.00 per month for hydro and nothing for gas. The Tenant states that they further agreed that the Tenant would put the hydro bill in their name. The Tenant states that for the first year of the tenancy they were billed an amount by the utility company consistent with the amount the Landlord had agreed they were to pay but that on the reconciliation amount they were billed an extra \$900.00 for usage over the previous period. The Tenant states that they informed the Landlord of the overage in their bill and requested that the Landlord place the utility in his own name. The Tenant states that after the Landlord failed to carry this out, the Tenant closed their account and the hydro was disconnected on December 10, 2012. The Tenant states that they assumed that the Landlord has ensured his name was on the account and that as the Landlord refused to do this, they had the hydro reconnected in their name. The Tenant states that they paid a total amount of \$1,990.00 over the tenancy to December 9, 2012 that they should have only paid \$1,445.00. The Tenant claims the overpaid amount and the hook-up charge of \$140.00.

The Landlord states that the Tenants were told that the previous tenants paid \$85.00 per month for electrical usage. The Landlord denies agreeing that the Tenants only pay this amount.

The Tenant states that as a result of the Landlord's failure to connect the hydro, the Tenants had to purchase two used generators, one for their unit and the other for the use of the tenants in the lower unit. The Tenant claims the cost of \$940.00 for these generators. The Tenant states that the generators were removed from the unit when they moved out. The Tenant also claims the cost of gas to run the generators in the amount of \$661.80. The Tenant claims \$47.18 for the cost of propane to use the barbeque for cooking and \$421.14 for the cost of replacing the lost food in their fridge and freezer.

The Landlord denies any responsibility for the loss of hydro and associated losses and states that the Tenant caused the problems themselves by stopping the utility service that they were required to provide to the unit. The Landlord states that the Tenants never informed him about the purchase of the generators and that the Tenants were told by the City to shut the generators down by 7:00 p.m. every night due to the loud noise caused by their operation.

The Tenant states that they were unable to access laundry facilities during the tenancy as the facilities are located in the lower unit and the Tenant was not able to gain access to that area for at least 50% of the time. The Tenant states that they informed the Landlord of the problem but that nothing was done. The Tenant states that the washing machine quit working for the last four months of the tenancy and that although the Landlord was informed the machine was not repaired or replaced. As a result of the problems accessing the laundry, the Tenant claims \$85.00 per month for nine months and \$680.00 for the cost of doing laundry at the nearest Laundromat located in another town. The Tenant states that they are not claiming the cost of gas to travel to the Laundromat.

The Landlord states that the persons living in the lower unit are the friends of the Tenants so access should not have been a problem and that further, the Landlord provided the Tenants with a key for access to the facilities around October 2012. The Landlord states that the Tenant purchased the washing machine that stopped working to replace the previous machine and that the Landlord reimbursed the Tenant for its cost. The Landlord states that the Tenant told the Landlord that if he purchased the parts the Tenants would make the repairs but that the Landlord was unable to obtain the parts for the machine. The Landlord states that he offered to reimburse the Tenants for the parts if they purchased them but that the Tenants failed to either purchase the parts or make the repairs.

The Tenant states that at move-in the back steps and deck were in disrepair and unsafe. The Tenant states that the Landlord agreed to pay for the materials if the Tenants made the repairs to these areas. The Tenant states that the Landlord said he would supply whatever was needed to make the deck and stairs safe and that the Landlord pushed his keys into the areas to determine their safety. The Tenant claims \$2,728.94 for the cost of repairing these areas and of which \$518.84 represents the costs of the materials. The Tenant also claims \$53.00 to remove the old decking to the dump.

The Landlord states that he only agreed to pay for materials to replace the rotten portions of the deck and that the Tenants went beyond safety concerns. The Landlord states that the Tenants were reimbursed \$124.24 for those portions of the repairs that the Landlord felt was necessary to ensure safety and that the Landlord also paid for the removal of construction materials that the Tenants brought into the yard. The Landlord states that he has receipts for these payments and that the Tenants also deducted \$88.00 for various supplies for the deck. The Landlord states that the Tenants have been adequately compensated. The Landlord states that there was no agreement for railings on the stairs and that the Landlord had rebuilt the stairs prior to the Tenants occupancy.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the undisputed evidence that the oral agreement in relation to hydro was to be placed in the Tenant's name, accepting as plausible that the Landlord's told the Tenants only the amount of the previous consumption, I find that the Tenants have not substantiated on a balance of probabilities that there was an agreement that the Tenants only had to pay \$85.00 per month. I therefore dismiss this claim. As the Tenants were responsible for ensuring that the hydro account be placed in their name, I find that by discontinuing the hydro account, the Tenants caused their own problems with the loss of that hydro. I therefore dismiss the claims of the Tenants in relation to the loss of hydro.

As the Landlord did not dispute that laundry facilities were included in the tenancy agreement, did not dispute the amount claimed by the Tenants for the loss of a washing machine and based on the undisputed evidence that the washing machine stopped working and that the Landlord did not repair or replace the washing machine, I find that the Tenants have substantiated their claim of **\$680.00** for the costs of laundry.

Accepting the undisputed evidence that the Tenants were provided a key to access the laundry, I find that the Tenant has failed to substantiate a loss of dryer usage and I dismiss this claim. The Tenant

Although the Landlord states that the Tenants were reimbursed for some costs associated with the repairs to the deck and stairs, given that no receipts were provided

as evidence, I find that the Landlord has not substantiated these payments. Given the that the Landlord does not dispute that the Tenants were given permission to make repairs to the deck and stairs but only disputes the extent of the repairs and considering the photos of the Tenants, I find that the Tenants in good faith made repairs to the stairs and deck as agreed and have therefore substantiated the costs of the materials in the amount of **\$518.84** as agreed. There is no evidence to support any agreement to pay for the Tenants labour or hauling materials to the dump and I therefore dismiss these claims. As the Tenant's application has met with some success, I find that the Tenants are also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,248.84** (\$518.84 + 680.00 + 50.00).

As the Landlord has been found entitled to **\$1,330.00** in the interim Decision dated January 24, 2013, setting the two entitlements off each other leaves **\$81.16** owed by the Tenants to the Landlord. As the Landlord holds the security deposit of **\$665.00** plus zero interest, I order the Landlord to retain the **\$81.16** from the security deposit and to return the remaining amount of **\$583.84** to the Tenants forthwith.

Conclusion

I Order the Landlord to retain the amount of \$81.16 from the security deposit plus interest in the amount of \$665.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$583.84**. If necessary, this order may be filed in the 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 7, 2013

Residential Tenancy Branch

