



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

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 and both landlords.

While the landlords had submitted, with their evidence on March 7, 2013, an Application for Dispute Resolution seeking to claim for damage to the rental unit and to retain the deposit, they confirmed during the hearing that they had not spoken with an Information Officer specifically about his Application and they had not paid the \$50.00 filing fee.

Further in consideration of the Residential Tenancy Branch Rule of Procedure #5.1 that states in order to have the Applications heard at the same time the party must submit their application at minimum 5 days prior to the hearing. The landlords submitted their evidence 4 business days prior to the hearing.

For these reasons, I have not considered the landlord's Application in this hearing, however the landlord remains at liberty to file a separate Application for Dispute Resolution for his claim.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit and for compensation for damage or loss pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on April 1 2011 as a month to month tenancy for a monthly rent (at the end of the tenancy) of \$925.00 due on the 1st of each month with a

security deposit of \$500.00 paid. The tenancy ended by October 31, 2012 after the tenant had vacated and returned keys to the landlords on October 26, 2012.

The parties also agree the tenant provided the landlords with her forwarding address in writing on October 26, 2012. The landlords also confirmed that they had not filed an Application for Dispute Resolution seeking to claim the deposit other than the Application noted above.

The tenant seeks return of double the security deposit and \$450.00 for compensation. The tenant submits that she seeks this compensation for pain and suffering as a result, in part, of the way she was treated by the landlords such as the landlord not saying hello when passing by; for the landlord kicking a pet cat; and for general uncomfortable feelings.

The tenant seeks compensation for hydro costs that she incurred that were over and above what she had expected to pay. She submits that the landlord originally offered, prior to entering into the tenancy agreement, to reduce the rent by \$100.00 if the tenant wanted to pay the hydro herself. The tenant states the landlord told her it was about \$100.00 per month.

The tenant submits that after she moved in she discovered that the hydro costs were substantial more than she had anticipated and despite these higher costs she still found the rental unit cold as a result, she states, of the construction of the unit. The tenant confirmed that she identified her concerns to the landlords and they reduced the rent by another \$75.00 per month.

The landlords confirmed that they had reduced the rent by \$75.00 but that they had intended the reduction to be for the winter months but they never did reinstate the full amount of rent. The landlords also submitted that they had never had complaints from previous tenants regarding either the temperature in the unit or the cost of hydro.

Analysis

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 find the tenant provided the landlords with the keys to the rental unit and her forwarding address on October 26, 2012. As such, I also find the landlords had until November 11, 2012 to either return the deposit or file an Application for Dispute Resolution claiming against the deposit.

Because the landlords failed to do either, I find the landlords have failed to comply with Section 38(1) of the *Act* and the tenant is entitled to double the amount of the deposit in accordance with Section 38(6).

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

While the tenant may have felt an uneasiness or uncomfortableness when dealing or interacting with the tenant, I find the tenant has failed to provide any evidence of these interactions caused her to suffer a loss or how any such loss resulted from any actions on the part of the landlord's that violated the *Act*, regulation or tenancy agreement.

In relation to the tenant's claim for compensation for the additional hydro costs, I find the landlord originally accommodated the tenant for hydro costs by reducing the rent at the start of the tenancy while the parties negotiated the tenancy agreement. I also find the landlord further accommodated the tenant's hydro costs by reducing the rent shortly after the start of the tenancy.

While I accept the tenant has established that her hydro costs exceeded the amounts of the rent reductions I find the tenant has failed to establish that the landlords have violated the *Act*, regulation or tenancy agreement in relation to these costs.

I also find it was incumbent upon the tenant to ensure she was aware of what the costs for hydro would have been independently from any statements the landlord may have made prior to entering into the tenancy agreement. I find the tenant cannot hold the landlord responsible for her failure to take due diligence to determine what hydro costs would likely be prior to entering into a tenancy agreement.

For these reasons, I dismiss the tenant's claim for the additional compensation.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,000.00** comprised of double the security deposit.

This order must be served on the landlords. If the landlords fail 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: March 14, 2013

Residential Tenancy Branch

