



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF, MND, MNDC, MNSD

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The tenant's application is a request for a monetary order for \$4500.00 and a request for recovery of the \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$4592.50 and a request for recovery of the \$50.00 filing fee.

Tenant's application

Background and Evidence

The applicant testified that:

- There was no heat in the rental unit even though in the contract says that heat is included, and as a result I had to buy heaters and heat the unit with electrical

heat. He therefore believes that the landlord should be returning all the money he paid for Hydro.

- In able to heat the unit, I had to buy three electric heaters and the landlord only paid me for one of them, and I therefore believe she should pay me for the other two heaters.
- I also had to buy two sink plugs for the rental unit and the landlord has not reimbursed me for those plugs.
- For the last six months of the tenancy I had problems with the toilet plugging, however since the landlord never dealt with any issues I didn't bother telling her of the problem, however I believe I should be reimbursed for my inconvenience.
- Whenever the landlord used her Garburator it used to flood my sink with dirty water and food.
- In early December 2012 the landlord left a box spring next of her garage blocking the way to my exit and did not move it even though I asked her to do so.
- Some glass broke outside my rental unit making it so that I could not use that portion of the property and the landlord failed to clean it up in a timely manner.
- I also suffered a breach of privacy, and pain-and-suffering as a result of the stress of having to deal with the landlord, and because the landlord spied on me through my windows. As a result he had to leave the blinds closed and live in a darkened unit for five months.
- Also because there was no heat in the rental unit it became very uncomfortable ,even with electric heat, and as a result I had to go and live at my girlfriend's place in Richmond which meant driving back and forth to Richmond for 30 weeks.
- Further due to emotional stress of having to deal with the landlord I also lost approximately 34 to 50 hours of work.
- He also believes the landlord should be paying him for extensive moving costs as he believed he was illegally evicted by the landlord.

The applicant is therefore requesting a monetary order as follows:

Return of all money paid for electricity	\$228.87
Cost of two electric heaters	\$125.00
Cost of two sink plugs	\$15.00
Compensation for six months plugged toilet	\$150.00
Compensation for sink flooded by landlord's garburator	\$75.00
Compensation for blocked access due to boxspring	\$75.00

Compensation for loss of use due to broken glass	\$75.00
Pain and suffering, breach of privacy, abuse, threats	\$250.00
Cost of driving back and forth to Richmond due to lack of heat in rental unit	\$450.00
Compensation for lost work time 34 hours at \$25.00 per hour	\$875.00
Moving costs	\$2131.13
Filing fee	\$50.00
Total	\$4500.00

The respondent testified that:

- On February 8, 2012 the tenant's portion of the Hydro bill was reduced from 33% to 20% to cover the extra cost of electrical heat. The tenant agreed to this amount at the time and therefore she does not believe he should get his Hydro costs returned.
- I already paid for one heater for the tenant and was not informed of any other heaters being purchased by the tenant, and certainly no other heaters were left behind so I fail to see why I would be required to pay for heaters .
- There were plugs in the rental unit when the tenant moved in and therefore she does not believe she should be paying for any plugs.
- The tenant made no complaint about the Garborator until he was supposed to be moving. Further she has tested the Garborator numerous times after the tenant vacated and never found any indication of it causing any flooding of the sink below.
- She did leave a boxspring outside, however there was still 34 inches of space to get past the boxspring and is well there were two exits and entrances that the tenant could be using so his access was never blocked.
- The broken glass was 20 feet from the tenant's entrance and did not block any use for the tenant. The glass broke in the winter and she was unable to pick it up right away as it was frozen to the patio.
- I am not an abusive person and at no time did I breach the tenant's privacy. I happen to be working in the backyard once and notice that his lights were on that's all, I certainly was not spying on the tenant.
- I don't believe that the tenant was forced to stay at his girlfriend's place, as he's admitted that he had three heaters and I fail to see how three heaters would not heat that rental unit. Further when they entered the rental unit for an inspection the rental unit was perfectly warm.

- I also don't believe that I should be responsible for any lost work by the tenant. The tenant was did very difficult to deal with and in fact made threats against me.
- I therefore feel this full claim should be dismissed.

Analysis

It's my decision that I will not allow any of the tenants claim against the landlord.

The tenant has provided no evidence to show what portion of the electrical bill was likely the result of the electrical heaters, and since the tenant's portion had already been reduced, I will not allow a further reduction to zero, especially since there were other items in the rental property that used electricity other than the heaters.

The tenant is claiming for two heaters he claims to have purchased, however there were no heaters left behind at the end of the tenancy, other than the one paid for by the landlord and therefore I also deny the tenants claim for the cost of heaters.

I also deny the claim for sink plugs, as the tenant has provided no evidence of having purchased plugs for the rental unit.

The tenant is claiming \$150.00 for the inconvenience of having a plugged toilet for six months, however in his own testimony he stated he never informed the landlord of the problem, and therefore I'm not going to allow this portion of the tenants claim, as the landlord cannot be held liable for a problem that was not even brought to her attention.

I also deny the claim for flooding from the Garborator as again it's my finding that the tenant has not met the burden of proving this portion of the claim.

It is also my finding that the tenant did not suffer any significant loss as a result of the boxspring being left outside. It may have caused some minor inconvenience however I'm not willing to issue any monetary order for that inconvenience.

I also deny the request for compensation as a result of the broken glass in the yard as again I find that this likely caused very little inconvenience to the tenant.

The tenant claims that he suffered pain and suffering due to the landlord's abuse and spying by the landlord however it is my finding that the tenant has not met the burden of proving that the landlord was spying on him, or that the landlord acted in an abusive manner.

I also will not allow the claim for cost of driving back and forth to Richmond to stay at his girlfriend's place as I'm not convinced that the rental unit was uninhabitable, nor has the tenant provided any evidence of these claimed costs of driving.

It's also my finding that the tenant has not met the burden of proving that he lost any pay as a result of time spent dealing with the landlord. Further it is also my finding that the tenant has not met the burden of proving that the landlord has acted unreasonably in her dealings with him. There was obviously some tension that has built up between the landlord and tenant near the end of the tenancy however I'm not convinced that it was a one-sided issue.

I also deny the tenants claim for moving costs. The tenant was not illegally evicted, and ,in fact, the tenant moved as a result of an Order of Possession issued by a Residential Tenancy Branch Arbitrator at a previous hearing.

Landlord's application

Upon reviewing the landlord's application I noticed that a large portion of the claim was the same as a claim that was dealt with in an arbitration that was held on February 7, 2013, and was dismissed **without leave to reapply**. I therefore will not rehear the portion of this claim that deals with loss of work time.

The remainder of the claim is dealt with below.

Background and Evidence

The landlord testified that:

- The tenant left the carpets in the rental unit in need of cleaning and therefore she is asking for \$150.00 for her time to clean the carpets.
- When the tenant moved out of the rental unit, a portion of the carpet was buckled and as a result she had to have a repairman come in and re-stretched the carpet.
- There was also an outdoor blue recycling bin missing when the tenant vacated. It had been supplied to the tenant at the beginning of the tenancy.
- The tenant also left some garbage behind which she had to clean out and re-sort as some of it was in the wrong bin.
- The tenant also left the bathtub, bathroom area and clean and as a result she had to clean that portion of the rental unit.
- The tenant also left the stove in need of cleaning.

- The tenant had also put duct tape on the entry door and when he remove the duct tape it left adhesive behind which she had to remove.
- There were also some dents and scrapes in the small bedroom door which had to be caulked and painted.
- She had purchased a heater for the tenant during the tenancy however the end of the tenancy it would no longer oscillate and therefore she believes the tenant should pay for replacement of that heater.

The applicant is therefore requesting a monetary order as follows

Carpet cleaning	\$150.00
Carpet repair	\$185.00
Replace blue recycling bin	\$15.00
Re-sort and clean up garbage	\$12.50
Cleaning in bathroom	\$40.00
Clean stove	\$20.00
Removed duct tape adhesive	\$10.00
Repair scrapes and dents in door	\$20.00
Replace broken heater	\$40.00
Filing fee	\$50.00
Total	\$542.50

The respondent testified that:

- The landlord did not do a move-out inspection, or even offered to do a move-out inspection with him and therefore there's no record of the condition of the rental unit when he moved out.
- When he moved out of the rental unit everything was left clean, even the carpets.
- The carpet that had to be re-stretched wrinkled on its own under normal use and not as a result of any negligence on his part. He believes it was an inexpensive carpet that was poorly installed in the first place.
- The recycling bin was left behind at the rental unit when he moved out.
- The landlord did not remove the garbage for three weeks and as a result he had no choice but to overfill the garbage bins. It was the landlord's responsibility to deal with the garbage.
- As stated above he left the rental unit completely clean when he moved out including the stove.
- He knows of no duct tape adhesive left behind although he admits he did at one point put some duct tape across the entry door.
- He is not aware of any damage to a door, and as stated above there was no move-out inspection done.

- The landlord did purchase a heater however the oscillating portion of the heater stopped working under normal use. He had to use the heater for approximately one year to heat his rental unit.

Analysis

It's my finding that I will not allow any of the landlords claim for damages.

The landlord failed to do the required move-out inspection with the tenant at the end of the tenancy, and therefore it is just the landlord's word against that of the tenants as to the condition of the rental unit when the tenant vacated.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Therefore since in this case the tenant denies causing any damages or leaving the rental unit in need of any cleaning, it's my finding that the landlord has not met the burden of proving her claim for cleaning or damages.

Further under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. Therefore the cost of any further cleaning or garbage removal done by the landlord cannot be passed on to the tenant.

Also, there is no evidence to show that the wrinkling of the carpet in the rental unit or the problem with the electrical heater was the result of anything other than normal wear and tear.

Conclusion

The tenant's application is dismissed in full without leave to reapply.

The landlord's application is dismissed in full without leave to reapply.

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 22, 2013

Residential Tenancy Branch

