



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, RP, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord complete repairs and a monetary order.

The hearing was originally convened via teleconference on April 16, 2013 and was attended by both the tenant and the landlord. The reconvened hearing held on May 17, 2013 was also attended by both the tenant and the landlord.

At the outset of the original hearing the landlord identified that he had not received the tenant's amended Application. The tenant testified she was not aware she had to serve the landlord with the amended Application. Based on this failure of service I adjourned the hearing allowing the tenant to serve the landlord with her amended Application and provide the landlord an opportunity to provide evidence in response to the tenant's claims.

During the first hearing the landlord was very belligerent during the proceedings and provided that he did not want to adjourn because he was a "busy man". At the outset of the reconvened hearing the landlord noted that he was attending under protest and that he is a "busy man".

I also note that prior to the original hearing the landlord had provided no evidence at all regarding either the security deposit or the water tank issues. As a result of the adjournment and my direction that allowed the landlord to submit evidence he provided evidence on both issues for which the tenant agreed she had received.

In addition, the parties agree the tenant vacated the rental unit on, or before, January 31, 2013 and as such there is no need to consider an order for the landlord to make repairs or reduce the rent for repairs not provided. As such, I amend the tenant's Application to exclude these matters.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the cost of emergency repairs; for all or part of the security deposit and to recover the filing

fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on June 15, 2012 as a month to month tenancy for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid. The tenancy ended on January 31, 2013.

The tenant testified she provided the landlord with her forwarding address on January 31, 2013 in the rental unit when she vacated the property and that about a week later she received a cheque from the landlord in the amount of \$304.40.

The landlord testified he had retained \$145.60 for carpet cleaning in accordance with the terms of an addendum to the tenancy agreement that stipulated that if the carpets had been cleaned prior to the tenancy they must be cleaned at the end of the tenancy or the tenant will provide comparable payment for the cost of carpet cleaning.

The landlord submitted a receipt for carpet cleaning at the start of the tenancy and a type-written document signed by the tenant that states she agrees the landlord may deduct \$145.60 from her security deposit. This document is dated February 14, 2013.

The tenant testified that she was forced to sign the document or the landlord would not return any of the deposit and so she signed but she states she made it clear to the landlord's wife that she did not agree with the deduction.

The tenant submits that on January 22, 2013 the hot water tank would not produce hot water. She states she contacted the landlord and he said he would come to look at it but it would be the next day. The tenant testified that she could not wait until the next day because she has children and she called a plumber who attended; correct the problem and she paid the plumber herself. She seeks compensation for this bill in the amount of \$108.08.

The landlord testified the tenant told him he had to come over right away and look at it or she was going to call her own plumber. The landlord told her she must not call a different plumber because the hot water tank was under warranty and he would have to call his own authorized service people.

Analysis

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.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property, and are made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

The section goes on to say that if the landlord fails to make the repairs within a reasonable time the tenant may have the repairs completed and seek reimbursement from the landlord for those costs she may have incurred.

From the testimony of both parties I find that tenant had identified an emergency repair as outlined under Section 33 and that she identified the need for the repair to the landlord on January 22, 2013.

However, as the problem that had been reported was not causing any ancillary damage but was merely an inconvenience, I find the tenant did not give the landlord any time at all to make the repairs; let alone a "reasonable time" as is required by Section 33.

As such, I find the tenant has failed to establish that the landlord violated the *Act* in regard to his obligations for emergency repairs. Further, I find that the tenant actually violated the *Act* by failing to provide the landlord with a reasonable time to make the repair.

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 less any amount agreed to in writing 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.

As the parties have both agreed the tenant signed the landlord's document agreeing the landlord may retain \$145.60 I find the landlord has complied with the requirements of Section 38(1) and returned all of the deposit less the amount agreed upon in writing.

While I acknowledge the tenant submits that she was coerced by the landlord's wife to sign the document or she would get nothing from her security deposit she has provided no evidence to support this position. Further, had the landlord not returned the deposit

because the tenant refused to sign the acknowledgement, she could have applied for dispute resolution for a monetary order for the full amount of the deposit.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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: April 16, 2013

Residential Tenancy Branch

