



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on March 11, 2013 for:

1. Return of all or part of the security deposit – Section 68; and
2. A Monetary Order for compensation – Section 67.

The Landlord applied on April 30, 2013 for:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. An Order to retain all or part of the security deposit – Section 38;
4. A Monetary Order for compensation or loss - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

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

Preliminary Matter

At the onset of the Hearing, the Landlord referred to evidence that was delivered late to the Residential Tenancy Branch and the Tenant. The Tenant states that she did not receive this evidence. The contents of the evidence package were described to the Tenant and the Tenant stated that she did not wish for an adjournment and was prepared to continue with the Hearing. It is noted that the Landlord’s evidence consists

of a 5 page response to the Tenant's evidence submissions and copies of rent payment stubs from the ministry that paid the Tenant's rent directly to the Landlord. Given that the late evidence is a response to the Tenant's evidence that could be made orally at the hearing, considering that the rent stubs are significant for the determination of one claim, and taking into account that the Tenant was prepared to continue with the hearing without adjournment to obtain this evidence, I find that this evidence may be considered for the purpose of determining the dispute.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on September 1, 2010 and ended on January 31, 2013. Although the tenancy agreement provided for \$975.00, after the first month of the tenancy the Landlord accepted \$950.00 in rent. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. Although the Parties mutually conducted a move-in and move-out inspection, the Landlord did not complete any condition inspection reports.

The Landlord states that for the period November 2011 to March 2012, the Tenant arbitrarily reduced the rent to \$925.00. The Tenant states that all rents were paid by a ministry cheque. The Landlord provided copies of the ministry rent payment stubs for this period. The Landlord states that although a loss of more than \$50.00 was suffered, the Landlord only claims \$50.00 for this loss.

The Landlord states that at the onset of the tenancy a heavy duty toilet seat was installed in the Tenant's unit and that at the end of the tenancy, this seat was gone and another black damaged seat was left. The Landlord states that he had a spare toilet seat that originally cost approximately \$25.00 and used this to replace the black toilet seat. The Landlord states that the old seat was thrown out. The Landlord claims

\$75.00 for the loss of the heavy duty toilet seat for which the Landlord originally paid \$90.00. The Tenant states that at the onset of the tenancy the toilet seat was cracked and that she and the Landlord together went to a store and purchased a seat for \$6.99. The Tenant states that this seat cracked so the Tenant purchased another one, white in color, and that this seat was left at the end of the tenancy. The Tenant provided photos of the toilet.

The Landlord states that he did not receive the Tenant's notice to end the tenancy until January 9, 2013 and that because the Tenant did not provide a full month's notice the Tenant owes the Landlord for rent for February 2013. The Landlord states that a new tenant filled the Tenant's unit on February 1, 2013 but that this tenant was supposed to have filled a different unit. As this other unit was not empty, the Landlord placed the new tenant in the Tenant's empty unit and this tenant has been there since. The other unit has not been filled and the Landlord claims \$950.00 for lost rental income. The Tenant states that she verbally gave the Landlord notice to end the tenancy in November 2012 and provided a witness letter that indicates this witness heard the verbal notice.

The Landlord states that the Tenant left garbage behind and claims \$261.60 for the cost of removal. The Tenant states that she left no garbage being and that the garbage referred to by the Landlord belonged to another tenant. This tenant provided a witness letter and attended the hearing as a Witness but the Landlord declined to ask questions of this tenant.

The Landlord states that the Tenant left the stove and oven unclean at move-out. The Landlord states that his wife cleaned this and the fridge and claims \$60.00. The Landlord did not provide photos of the stove and fridge. The Tenant states that the unit was cleaned at move-out and that the Witness cleaned the fridge and stove. The Tenant provided photos of the unit from move-out. The Landlord declined to ask any questions of the Witness.

The Landlord states that the Tenant was provided with a 2 year old washer and dryer at the onset of the tenancy and that at the end of the tenancy these appliances were gone. The Landlord has not replaced these appliances and claims \$750.00 for their loss. The Tenant states that the washer and dryer were at least 10 years old and were not working at the onset of the tenancy. The Tenant states that she purchased her own washer and dryer in October 3, 2010. The Tenant provided receipts for this purchase. The Tenant states that she asked the Landlord what he wanted to do with the old appliances and the Landlord told her to get rid of them. The Tenant states that the appliances sat on the deck for a few months until they were given to a thrift store.

The Tenant states that she provided her forwarding address in writing to the Landlord on February 21, 2013 by registered mail. The Tenant provided a tracking number for this mail. The Tenant states that she is not waiving the return of double the security deposit. The Tenant states that the Landlord initially returned a portion of the security deposit but then placed a stop payment on the cheque. The Tenant states that funds were drawn from this cheque before it cleared and that following the stop payment, the bank froze the Tenant's account. The Tenant states that she had to borrow funds until her account was re-opened by the bank. The Tenant claims \$100.00 to repay the loan. The Landlord states that he did not receive the Tenant's forwarding address until he received the Tenant's application for dispute resolution. It is noted that the mail information provided by the Tenant indicates that the mail was sent express post and was delivered to the Landlord's resident city on February 25, 2013.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Section 52 of the Act provides that in order to be effective a notice to end tenancy must be in writing. Based on the Tenant's evidence of oral notice to end tenancy, I find that

this notice is not in compliance with the Act. However, ineffective notice does not automatically provide a right to lost rental income.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord 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.

Although the Landlord states that the new tenant only filled the Tenant's unit because the other unit was not available, this unavailability of this other unit had nothing to do with any actions of the Tenant. As the Landlord filled the Tenant's unit with a new tenant on February 1, 2013, regardless of whether or not the Tenant gave late notice, I find that the Landlord did not lose any rental income as a result of any action of the Tenant and I therefore dismiss this claim.

Based on the evidence that rent was \$950.00 per month and given the Landlord's cheque stub evidence, I find that the Tenant did not pay the full rent for a few months, I find that the Landlord has therefore substantiated an entitlement of **\$50.00** for unpaid rent as claimed in the application.

Considering the photo and oral evidence of the Tenant, I find that the Landlord has not substantiated that the Tenant caused any loss in relation to the toilet seat and I dismiss this claim of the Landlord. Given the Witness evidence of cleaning the stove and considering that the Landlord provided no other evidence of an unclean stove, I find that the Landlord has not, on a balance of probabilities, substantiated that the stove was left unclean. I therefore dismiss this claim. Given the Tenant and Witness evidence that the garbage did not belong to the Tenant, I find that the Landlord has not on a balance of probabilities substantiated that the Tenant left the garbage and I dismiss this claim.

Although the Landlord claims that the Tenant removed the appliances without the knowledge of the Landlord, given the Tenant's evidence of the purchase of appliances, I find that the Tenant's evidence that the appliances were old and in disrepair and that the Landlord told the Tenant to discard the old appliances to hold a ring of truth. I therefore find that the Landlord has not established on a balance of probabilities that the Tenant caused the Landlord any loss from these appliances and I dismiss this claim.

Although the Tenant claims a loss arising from the Landlord placing a stop payment on the security deposit cheque, given the evidence that the bank froze the Tenant's account following the stop-payment, I find that the Tenant has not established that the Landlord was responsible for her funds being frozen and I dismiss the Tenant's claim for the loan.

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24 of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Given that no move-in inspection report was completed, I find that the Landlord's right to claim against the security deposit has been extinguished.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. As the Landlord's right to make an application to claim against the security deposit was extinguished, I find that the Landlord should have returned the security deposit to the Tenant within 15 days of the receipt of the Tenant's forwarding address. Given the Tenant's postal evidence, I find that the Tenant provided her forwarding address to the Landlord by mail on February 21, 2013. As the Landlord has not returned the security deposit to the Tenant, I find that the Landlord is required to

repay the Tenant double the security deposit plus zero interest in the amount of **\$950.00**.

As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$100.00**. As the Tenant has been found entitled to **\$950.00**, I deduct the Landlord's entitlement from this sum and order the Landlord to pay the Tenant the remaining amount of **\$850.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$850.00**. 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: June 06, 2013

Residential Tenancy Branch

