



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was originally scheduled to be heard June 26, 2013 to deal with a tenant's application for compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the originally scheduled hearing.

Preliminary and Procedural Matters

At the outset of the original hearing the landlord requested the hearing be adjourned in order for the landlord to attend a medical appointment with her terminally ill husband. In considering this request I also determined that the landlord had been unable to serve her evidence upon the tenant as the tenant had moved since filing her Application for Dispute Resolution and had not provided the landlord with a current service address. I adjourned the hearing and I ordered the landlord to serve the tenant with her evidence at the new service address provided by the tenant orally during the hearing.

At the reconvened hearing held on August 15, 2013 both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party with respect to matters relevant to the issues under dispute.

I heard that during the period of adjournment the tenant had provided the landlord with her forwarding address in writing and the landlord had filed an Application for Dispute Resolution seeking unpaid rent and other damages from the tenant. The parties indicated a willingness to have both Applications heard during this time. I did not allow the landlord's Application for Dispute Resolution to be heard during the reconvened hearing as I was unprepared to deal with the landlord's claims. Rather, the parties were given the option to have both Applications heard during the hearing time set for the landlord's Application for Dispute Resolution. The tenant indicated she wished to proceed with her Application for Dispute Resolution. Therefore, I continued to hear from the parties with respect to the tenant's Application for Dispute Resolution only.

I noted that part of the tenant's amended monetary claim included return of a portion of the security deposit and/or pet deposit. Although the tenant submitted the landlord could not retain the security deposit and pet deposit since a move-in inspection report was not prepared, I nevertheless found her request for return of all or part of the deposits to be premature considering the tenant had not provided a forwarding address in writing prior to filing her amended claim. Further, the landlord confirmed that she had filed an Application for Dispute Resolution seeking recovery of unpaid rent which may be claimed against the security deposit even if condition inspection reports are not completed. Therefore, I did not deal with the tenant's request for return of all or part of the security deposit or pet deposit and both parties were informed that it would be dealt with as part of the landlord's Application for Dispute Resolution for unpaid rent if the parties were unable to resolve their dispute in the meantime.

Issue(s) to be Decided

Is the tenant entitled to receive compensation from the landlord in the amount claimed, as amended?

Background and Evidence

The tenancy commenced January 15, 2011 and the tenant paid a security deposit of \$550.00 and a pet deposit of \$200.00. The tenant was required to pay rent of \$1,050.00 on the 1st day of every month. In March 2013 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause with an effective date of April 30, 2013. The tenant paid only \$300.00 of the rent payable on April 1, 2013. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent which the tenant received via registered mail on April 15, 2013. The tenant moved out of the rental unit April 15, 2013.

The rental unit was a house divided into an upper and lower suite. The tenant resided in the upper suite and other tenants resided in the lower suite. The house had two electric meters but only one natural gas meter. The natural gas account was in the tenant's name.

Heat for the upper unit was supplied by a furnace that operated on natural gas; however, the furnace fan operated on electricity supplied by the lower tenant's electricity connection. The lower suite had a fireplace that ran on natural gas supplied by the tenant's gas account. Until new tenants moved into the lower suite, the tenant seemed satisfied with the offset of utilities supplied to the other unit. However, after new tenants

moved into the lower suite January 1, 2013 the tenant's gas bills increased significantly and disputes concerning the gas consumption followed.

In filing her application, the tenant had requested the landlord compensate the tenant \$916.64 for the increase in gas consumption after the new tenants moved into the lower suite. After both parties made their respective submissions concerning the gas bills and I informed the parties of certain requirements under the Act and Regulations with respect to enforceable terms of a tenancy agreement, the parties mutually agreed to resolve the dispute concerning the gas bills by way of the landlord compensating the tenant \$475.00.

The remainder of the tenant's amended monetary claim are as follows:

Moving costs and change of address –

The tenant submitted that she was evicted by the landlord and, as a result, she incurred moving costs and change of address costs that she seeks to recover from the landlord. The tenant explained that although she did not agree with the landlord's reasons for issuing 1 Month Notice the tenant decided to accept the end of the tenancy as of April 30, 2013 and did not dispute the 1 Month Notice. However, the tenant withheld \$750.00 of the rent due for April 2013 so that she could afford to move and the tenant believed the landlord would not refund the deposits. The tenant was of the position the landlord should not have evicted her by way of the 10 Day Notice as the landlord could have applied the deposits to the rent owed or April 2013.

The landlord testified that she also expected the tenant to occupy the rental unit until April 30, 2013 after the 1 Month Notice was served; however, when the tenant failed to pay the rent owed for April 2013 the landlord took the steps available to landlords when a tenant does not pay the rent that is due.

Rent –

The tenant submitted that since she moved out April 15, 2013 as stipulated on the 10 Day Notice, the tenant is only obligated to pay rent for 15 days in April 2013. Since the tenant is obligated to pay only ½ month's rent and the landlord has deposits totalling more than ½ month's rent the tenant seeks to recover the difference.

The landlord submitted that rent payable on April 1, 2013 was \$1,050.00 and the tenant only paid \$300.00 thus the tenant is not entitled to return of rent.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record a settlement agreement in the form of a decision or order. In recognition of the mutual agreement between the parties with respect to the gas bills, I award the tenant compensation of \$475.00.

With respect to the tenant's moving and change of address costs I find the tenant not entitled to recover these amounts from the landlord. Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. The tenancy was set to end April 30, 2013 pursuant to an undisputed 1 Month Notice to End Tenancy and the tenant was obligated to pay rent of \$1,050.00 on April 1, 2013. As the tenant was informed during the hearing, the tenant must not withhold deposits from rent payable unless the tenant has the landlord's consent to do so. Without the landlord's consent the tenant remained obligated to pay the full amount of rent due on April 1, 2013. Her failure to do so entitled the landlord to serve the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent. Therefore, I find the tenant was legally evicted by way of the 10 Day Notice and the associated costs of moving are not the responsibility of the landlord. Therefore, I dismiss this portion of the tenant's claims.

I find the tenant is not entitled to return of any rent for the month of April 2013 since she did not over pay the rent for April. The tenancy agreement provides that rent is payable on a monthly basis, not a daily basis. The reason the tenancy ended before the end of April 2013 was due to the tenant's violation of the tenancy agreement and the Act, namely not paying rent that was due. Accordingly, I find the tenant's request that rent be limited to April 1 -15, 2013 does not have a basis under the Act. Further, as I explained earlier in this decision, the security deposit and pet deposit have not been dealt with under this decision as the tenant's requests for their return was premature. Therefore, I make no award to the tenant for return of rent or deposits with this decision.

In light of my findings above, the tenant is provided a Monetary order in the amount of \$475.00 to serve upon the landlord and enforce as necessary.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$475.00 for gas bills. The tenant's requests for return of the security deposit and pet deposit were premature and are part of a landlord's Application for Dispute Resolution set for a future hearing. The remainder of the tenant's monetary claims have been dismissed.

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: August 29, 2013

Residential Tenancy Branch

