



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC OLC FF O

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied for monetary compensation and an order that the landlord comply with the Act, regulation or tenancy agreement. The landlord applied for monetary compensation. Both the landlord and the tenant participated in the teleconference hearing.

As the tenancy ended in July 2013, I did not consider the portion of the tenant's application regarding an order that the landlord comply with the Act, regulation or tenancy agreement.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on December 1, 2012. The tenancy agreement indicates that the tenant would be responsible for 40 percent of the hydro for the first four months of the tenancy, and then the parties would negotiate a new agreement for hydro. The tenant and the landlord confirmed in the hearing that they did not come to an agreement regarding a different division of the hydro during the tenancy.

On June 7, 2013 the landlord and the tenant attended a dispute resolution hearing pursuant to the tenant's application for clarification of the tenancy agreement and an order that the landlord comply with the Act, regulation or tenancy agreement. In the decision dated June 7, 2013, the landlord was ordered to not change the access code to the basement, containing the laundry and storage areas, during the tenancy. The landlord was also cautioned that she must not make unilateral changes to any use of the property that would impact the tenant, or to the terms of the tenancy agreement.

On July 19, 2013 the landlord served the tenant a notice to end tenancy for failure to pay \$109.17 in utilities. The tenant did not apply to dispute the notice. The tenant vacated the rental unit on July 29, 2013.

Tenant's Application

The tenant claimed \$2000 for loss of quiet enjoyment for the last two months of the tenancy and \$304.96 for her moving and storage costs. The tenant stated that the landlord failed to comply with the tenancy agreement to negotiate new terms for the hydro, and as a result the tenant suffered stress and loss of quiet enjoyment and ultimately had to move out of the rental unit. The tenant submitted several emails from the landlord, as well as a written statement from the tenant's mother and the tenant's doctor, to support her claim.

In response to the tenant's application, the landlord stated that she had no choice but to communicate with the tenant by email, because the tenant wanted everything in writing. The landlord further stated that she attempted to discuss the hydro with the tenant, but the tenant only wanted to pay 25 percent, and the landlord believed that the tenant should pay more than 40 percent due to the tenant's "unacceptable waste." The landlord submitted a list of ways to save energy that she was going to give to the tenant, but their discussion never got that far. The landlord then decided to serve the tenant with the eviction notice "in order to end what was turning out to be one stressful event after another."

Landlord's Application

The landlord claimed \$180.34 in unpaid utilities, representing 40 percent of the utilities for the period beginning March 22, 2013, and \$308.10 in lost revenue for the first 13 days of August 2013.

The tenant's response to the landlord's application was that the landlord told the tenant that she did not need to pay the hydro until the situation was resolved. The tenant

stated that she was so tired, exhausted and confused from trying to deal with the landlord that she accepted the notice to end tenancy. The tenant stated that she should not have to pay for lost revenue for August because she complied with the eviction notice. Further, the unit was empty because the landlord was re-carpeting, as the carpet was in poor condition at the outset of the tenancy.

The landlord acknowledged that the rug in the rental unit needed to be replaced, so that work was done.

Analysis

In the hearing, I explained to the landlord and the tenant that the clause in the tenancy agreement indicating that the parties would re-negotiate the hydro split after four months was not an enforceable term, as you cannot make a contract for a future contract. If the landlord and the tenant had negotiated and agreed in writing to change the hydro split, then that new agreement could be viewed as a legitimate amendment to the tenancy agreement. As no such agreement was reached, the original hydro split of 60-40 would still apply.

Tenant's Claim

It is clear, from the landlord's own evidence, that she was monitoring the tenant's hydro use, and felt it was appropriate for her to offer numerous "suggestions" as to how the tenant could reduce her hydro use. I find that in doing so, the landlord was unreasonably interfering with the tenant and her tenancy. I therefore find that the tenant is entitled to some compensation for loss of quiet enjoyment for the months of June and July 2013. I do not find that the tenant is entitled to \$1000 per month for loss of quiet enjoyment, as a tenant pays for many services, facilities and amenities during a tenancy, not only quiet enjoyment; and in this case the landlord's interference was not so significant as to warrant such a substantial monetary award. I find that the tenant is entitled to \$100 per month for the months of June and July 2013, for loss of quiet enjoyment.

I find that the tenant is not entitled to moving costs, as she chose to accept the notice to end tenancy and move out, rather than dispute the notice.

Landlord's Claim

I find that the landlord is entitled to \$180.34 in unpaid utilities, based on the rate set out in the tenancy agreement of 40 percent.

I find that the landlord is not entitled to lost revenue as claimed, as she would have been unable to re-rent the unit while replacing the carpeting. Further, the landlord did not provide any evidence of her attempts to mitigate her loss by attempting to re-rent the unit as soon as possible. I therefore dismiss this portion of the landlord's application.

As the landlord's claim was partially successful, I find that she is entitled to partial recovery of her filing fee, in the amount of \$25.

Conclusion

The tenant is entitled to \$200. The landlord is entitled to \$205.34. I decline to award the landlord a monetary order for the minimal balance of \$5.34.

The remainder of both applications is 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: September 3, 2013

Residential Tenancy Branch