



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1170 BARCLAY STREET INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for money owed for loss under the Act;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return of double the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issues to be Decided

Is the landlord entitled to a monetary for money owed for loss under the Act?

Is the either party entitled to claim against the security deposit?

Background and Evidence

The parties entered into a fixed term tenancy which began on August 2012. On January 8, 2013, the parties entered into a subsequent fix term agreement that was to expire on January 1, 2014. Rent in the amount of \$1,350.00 was payable on the first of each month. A security deposit of \$675.00 was paid by the tenant. The tenancy ended May 31, 2013.

The landlord's application

The landlord's agent stated that she is proceeding with her claim for utilities which relate to electricity and gas for the tenant's rental unit. The landlord's agent withdraws the claim for any other utilities as these amounts were billed for the entire building and there was no agreement that the tenant would pay a portion of these bills.

The landlord's agent stated that the addendum to the tenancy agreement states that the tenant is responsible for utilities in excess of \$20.00. The parties agreed that the monthly average in excess of \$20.00 is \$10.00 per month and based on a ten month tenancy that amount is \$100.00, which remains unpaid. Filed in evidence are copies of the electrical and gas invoices.

The tenant's application

The tenant stated that she provided her forwarding address in writing, prior to the tenancy ending as it was attached to a cheque that was provided to the landlord. The tenant further stated that on June 14, 2013, the landlord requested her forwarding address which she provided by email.

The landlord's agent denied receiving the tenant's forwarding address prior to the June 14, 2013, email. The landlord's agent stated that they file their application on June 17, 2013, which was within the required timeline under the Act.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, each party has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The landlord's application

The parties agreed that the tenancy agreement provided a clause which required the tenant to pay for the utilities which exceeded \$20.00 for her rental unit. The parties agreed that the monthly average which exceeded \$20.00 was \$10.00 per month and this amount remains unpaid. I find that the tenant had violated the tenancy agreement when she failed to pay the amount that exceeded \$20.00. Therefore, I find that the landlord has established a total monetary claim of **\$100.00**.

The tenant's application

The evidence of the tenant was that she provided her forwarding address in writing prior to the tenancy ending. The evidence of the tenant was on June 14, 2013, she provided that address again by email, when it was requested by the landlord. The evidence of the landlord's agent was that they first received her forwarding address on June 14, 2013, by email.

In this case, the landlord's agent denied that they received the tenant's forwarding address prior to the email of June 14, 2013. The landlord's application was filed June 17, 2013. I find without further evidence from the tenant, such as copy of the letter which she alleged was provided to the landlord prior to the tenancy ending, that the tenant has failed to prove that the landlord has violated section 38 of the Act. As a result, I find the tenant is not entitled to double the return of the security deposit.

I order the landlord to retain the amount of **\$100.00** from the tenant's security deposit (\$675.00) in full satisfaction of their claim. I grant the tenant an order under section 67 for the balance due of their security deposit in the amount of **\$575.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As both parties' applications had merit, I find neither party are entitled to recover the cost of the filing fee from the other party as these amounts would simply offset each other.

Conclusion

The landlord is granted a monetary award and may keep a portion of the tenant's security in full satisfaction of their claim. The tenant is granted a formal order for the balance remaining of their security deposit should the landlord failed to return the above mentioned amount.

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 23, 2013

Residential Tenancy Branch

