



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, MNR, MND

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 Landlord applied on July 15, 2013 for:

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

The Tenant applied on July 19, 2013 with an amendment made October 7, 2013 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit – Section 38;
3. An Order for the return of the Tenant’s personal property – Section 65; and
4. 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 under oath.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Are the Parties entitled to recover of their respective filing fees?

Background and Evidence

The following are agreed facts: The tenancy started on September 15, 2012 and ended on June 30, 2013. The Tenant moved out of the unit on June 29, 2013, left a written forwarding address in the unit and mailed the keys to the Landlord by registered mail. Rent of \$1,000.00 was payable monthly and at the outset of the tenancy the Landlord collected \$500.00 as a security deposit. No move in inspection was conducted. The Tenant owes \$116.35 to the Landlord for utilities to the end of the tenancy. The Landlord owes the Tenant \$100.00 for loss of use of the dishwasher during the tenancy. The Landlord has stored a few belongings that the Tenant left behind and the Tenant will make arrangements to collect these belongings.

The Landlord states that just prior to the start of the tenancy, on July 17, 2012, the septic system was pumped out and serviced as it had not been done for six years. The Landlord states that the septic system needs to be pumped out every five years. The Landlord states that at the onset of the tenancy the Tenant was provided with instructions on the use of the septic system that included the non-use of tampons. The Landlord states that shortly after the end of the tenancy, the Landlord notices a sewer smell and upon investigating the septic system found tampons in the system and saw that the system was not functioning properly. The Landlord states that the Tenant is responsible for the presence of the tampons and that septic system was emptied at a cost of \$389.55. The Landlord claims this amount.

The Tenant states that as a person with a master's degree in civil engineering, the Tenant is very aware of how a septic tank works and that the Tenant did not put any tampons in the system as the Tenant does not use this type of product. The Tenant states that the tampons could have come from the Landlord's visitors to the house that contains the Tenant's unit. The Tenant states that the Landlord's son and roommate, roommate's parents, and others were at the unit while the Landlords were not present

and that it could very well have been these guests that were responsible. The Tenant states that any guests of the Tenant's were informed about the restrictions on the septic system. The Landlord agrees that their son was at the house with his roommates and their parents.

The Tenant states that the unit was furnished and that during the tenancy the Tenant placed some of the furnishings (TV, vacuum cleaner, water dispenser) in the garage on a temporary basis and that approximately a month later in either October or November noticed that these items were missing from the garage. The Tenant states that upon notifying the Landlord, most of the items were replaced except for a few including the TV, vacuum and water dispenser. The Tenant states that the water dispenser held 18.9 litre bottles and that she had to use smaller bottled water as the dispenser was not available to her. The Tenant states that she had another TV and borrowed a vacuum. The Tenant claims \$250.00 for the loss of use of these items.

The Landlord states that the unit was only advertised as semi-furnished but when the Tenant indicated that she had no furnishings, the Landlord allowed the Tenant to use more items, such as bedding and a piano. The Landlord states that the items described by the Tenant were found in the garage in February 2013 and assuming that the Tenant did not need them, moved the items into a safer location. The Landlord states that the Tenant did not say anything about these items until she sent them an email on May 5, 2013. The Landlord states that they responded the next day and offered to bring the items back but that the Tenant states that she only wanted a coffee table and some swing cushions. The Landlord states that they believed that the Tenant's concerns were then resolved.

The Tenant states that the Landlord provided the Tenant with two cords of wood to use in the fireplace and to help offset the electric baseboard heating costs. The Tenant states that the wood was not seasoned and would not burn and that as a result there was no savings to the heat costs. The Tenant states that she averages a monthly electricity bill of \$300.00 in the winter and \$100.00 in the summer. There is no dispute

that these costs include all electrical usage including the base board heaters. The Tenant states that she did use the propane fireplace to help heat the unit and reduces her claim for not receiving a reduced heat cost \$100.00.

The Landlord states that the provision of the firewood at the onset of the tenancy was a gift and that nothing in the tenancy agreement provides that the Landlord will supply the Tenant with wood. The Landlord also states that the Tenant used at least $\frac{3}{4}$ of the wood provided by the Landlord. The Landlord states that the Tenant additionally had heat provided in the unit from both a propane fireplace and baseboard heaters.

The Tenant states that the water in the unit was not potable and that the Tenant was required to purchase water for use during the tenancy. The Tenant states that the Landlord told her that the tap water was not for drinking but was probably good for cooking. The Tenant states that a water sample was taken from the unit on September 24, 2013 and tested. The Tenant provides the result of those tests as evidence. The Tenant claims the cost of water purchased in smaller bottles as the Landlord removed the large water container. The Tenant estimated that she paid \$6 for 24 bottles of water and estimates her total costs on her estimated water usage for the total amount of \$1.982.00. The Tenant claims \$40.00 for the cost of the lab analysis of the water.

The Landlord states that the Tenant was told that the water was useable both for drinking and cooking but that the Landlord used bottled water for drinking while living at the unit.

Analysis

Section 7 of the Act provides that where a party does not comply with the Act, regulation or tenancy agreement, the non complying party must compensate the other party 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.

Noting that there was no witness evidence for the secure taking and transporting the water sample to the lab for analysis and considering that the water sample was stated by the Tenant to have been taken a few months after the end of the tenancy, I find that the Tenant has failed to establish that the water in the unit was not useable during the tenancy and I dismiss the Tenant's claim for both the water consumption costs and the lab analysis costs. Noting that there is nothing in the tenancy agreement that provides for any supply of wood to the Tenant, I find that the Tenant has not substantiated that the Landlord did not comply with the tenancy agreement and I dismiss the Tenant's claim for heat cost reduction. Given the Tenant's evidence that the Tenant removed the items to the garage, accepting that these items were stored for over a month, noting that the Tenant had the use of replacement items and considering the Tenant's email response to the Landlord about the return of these items, I find that the Tenant has not substantiated that the Landlord acted to cause any loss to the Tenant and I dismiss the Tenant's claim for items removed during the tenancy.

Given the evidence that there were other persons using the same septic system as the Tenant during the tenancy, I find that the Landlord has failed to substantiate that the Tenant was responsible for damages to the septic system and I dismiss this claim.

Given the agreed facts by the Parties, I find that the Tenant owes the Landlord **\$116.35** for the cost of unpaid utilities and the Landlord owes the Tenant **\$100.00** for the loss of the dishwasher. Setting the amounts against each other leaves **\$16.35** owed by the Tenant to the Landlord. As both Parties were substantially unsuccessful with their applications, I decline to award either of the filing fees.

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. As the Landlord made its application within the time required, I find that the Tenant is not entitled to return of double the security deposit and I dismiss this claim.

I order the Landlord to reduce the security deposit of **\$500.00** plus zero interest by **\$16.35** and to return the remaining amount of **\$483.65** to the Tenant.

Conclusion

I Order the Landlord to retain the amount of \$16.35.00 from the security deposit plus interest in the amount of \$500.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$483.65**. 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: October 29, 2013

Residential Tenancy Branch