



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other by mailing, by registered mail to where the other party resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the Tenant is entitled to a monetary order and if so how much?
- e. Whether the Tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on September 29, 2009. The tenancy agreement provided that the tenant(s) would pay rent of \$850 per month payable on the first day of each month. The tenant paid a security deposit of \$425 at the start of the tenancy. The tenancy ended on July 7, 2013.

Landlords Claim:

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$36.37 for the cost of renting a rug shampooer, \$15 for solution and \$40 for labour for a total of \$91.39. The rugs were cleaned approximately 1 year ago. I determined the tenant failed to sufficiently clean the carpets when she left and the amount claimed is reasonable.
- b. The landlord claimed the sum of \$100 for the cost of 5 hours of labour to clean the rental unit. She testified that she cleaned scuffs on the wall, the loft, baseboard heaters, window tracks, the sofa bed, wood debris etc. The tenant disputes this claim. She produced a number of photographs

and letters from others that state the rental unit was satisfactorily cleaned. After carefully considering all of the relevant evidence I determined the landlord is entitled to \$50 of this claim.

- c. The landlord claimed the sum of \$500 for damage to a two piece sectional. The landlord testified there are five burn holes on the cushions. The tenant disputes that number. The landlord suggested that perhaps it was caused by cigarette ash from smoking although the landlord acknowledges the tenant does not smoke. The landlord testified the couch was purchased 1 ½ years before the tenant took possession for a cost of \$1150 to \$1200. The sectional has been moved to the landlord's house on the adjoining property as the new tenant had his own couch. The landlord testified the damage is not fixable. The Tenant testified that only 4 burn holes. She testified it amounts to normal wear and tear. The damage was cause from a spark from the wood stove which was not built according to Code. After hearing all of the evidence I determined the landlord is entitled to \$200 of this claim.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$341.39 plus the \$50 filing fee for a total of \$391.39.

Security Deposit

I determined the security deposit plus interest totals the sum of \$425. I determined the landlord is entitled to retain this sum of \$391.39 from the security deposit. I further ordered that the landlord pay to the Tenant the balance of the security deposit in the sum of \$33.61.

Tenant's Claim:

With respect to each of the Tenant's claims I find as follows:

- a. The tenant claimed the sum of \$2125 for the reduced value of the tenancy caused by the failure of the landlord to fix 3 of the baseboard heaters in a timely manner. She testified the three of the heaters were defective from the period of December 2011 to Sept 2012 (10 months) and the rent should be reduced by 25% for each of those months. In addition the tenant purchased three cords of wood at \$300 each for the wood stove.

The tenant testified that she advised the landlord of the problem in December 2011. The landlord failed to respond. On August 30, 2013 she gave the landlord a formal letter demanding the heaters be replaced by September 30, 2012. The heaters were replaced on September 16, 2012.

The landlord disputes the tenant's evidence as to when they were advised of the problem with the heaters. Further, she testified there are 8 baseboard heaters in the house and a wood stove. She testified her husband first attended and thought the problem may be with the thermostat and he changed that. Further she felt there was not an urgency during the summer as the tenant was away in Vancouver for much of that time.

After carefully considering all of the evidence I determined the landlord failed to respond to this problem in a timely manner. However, the amount claimed by the tenant is excessive and not supported by the evidence. I determined the tenant is entitled to compensation for the months of December, January, February and March in the sum of \$400 which includes any additional cost for wood that may have been incurred. In coming to this determination I have considered that the tenant had some heat in the rental unit. Further, I the tenant was absent for much of the summer. I determined the baseboard heaters that were functioning plus the wood stove provided adequate heat for the period after March 31, 2012 until the baseboard heaters were replaced in September 2012.

- b. The tenant claimed \$850 in compensation (25% of the rent for 4 months) caused by a defective fridge. The fridge was noisy and vibrating. In June 2012 the landlord looked at it and determined it needed to be replaced. At the request of the tenant the fridge was placed on the outside porch. The fridge was eventually replaced as the end of August. The tenant testified she suffered some loss of food. However, that was never told to the landlord. I determined the tenant has suffered some reduction of the value of the tenancy caused by the noisy fridge which I set at \$50. The tenant's claim of \$850 is excessive and not supported by the evidence. There is insufficient evidence that she lost food because of it. Further, there is insufficient evidence that the noise was a problem after the fridge was placed outside.
- c. The tenant claimed the sum of \$425 for the reduced value of the tenancy (for 2 weeks) caused by a problem with the septic field in September 2011. I determined the landlord acted promptly when advised of this problem. I dismissed the claim as the tenant failed to prove she suffered a loss.
- d. The tenant claimed \$800 for 4 illegal entries (@ \$200 per entry). The landlord testified they entered the rental unit on two occasions only. On one occasion they had the permission of the tenant's partner. On the second occasion the tenant had removed all of their furniture and the tenant was not present and the landlord needed access to get two end tables. I determined the tenant failed to prove there was 4 illegal entries. The tenant has not suffered a loss. However, she is entitled to nominal damages in the sum of \$25 for the last entry to obtain the two end tables as the landlord did not have legal authority to enter.
- e. The tenant's claim of \$68.05 for the cost of replacing bulbs that were rotted by the landlord in August 2012. The tenant had allowed the garden to be overgrown and fall into disarray. The landlord felt it was necessary to clean up the garden and in the process inadvertently damaged the bulbs.

The tenant testified she was upset about the loss of these bulbs. She was not able to produce evidence of her purchase. In the circumstances I determined the tenant is entitled to \$35 of this claim.

In summary I determined the tenant has established a claim against the landlord in the sum of \$510 plus \$50 for the cost of the filing fee for a total of \$560.

Summary:

I ordered that the landlord shall retain the sum of \$391.39 of the security deposit.

I determined that the tenant is entitled to the return of balance of the security deposit in the sum \$33.61. In addition I determined the tenant has established a claim against the landlord in the sum of \$560 for a total of \$593.61. **I ordered the landlord(s) to pay to the tenant the sum of \$593.61.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: September 13, 2013

Residential Tenancy Branch

