



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OPC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of the balance of her security deposit and a cross-application by the landlords seeking to refute the tenant's claim. Both parties participated in the conference call hearing and confirmed that they had received the other's application and evidence.

Issue to be Decided

Is the tenant entitled to a monetary order and the return of her security deposit?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2004 at which time the tenant paid a \$550.00 security deposit and that it ended on January 26, 2013.

At this hearing, the parties agreed that the tenant should receive from the landlord \$50.00 of the monies that were withheld from the security deposit and that the landlord was entitled to retain \$103.73 for natural gas and \$45.43 for hydro.

The tenant seeks compensation for the cost incurred when she moved from the unit. The tenant had been served with a one month notice to end tenancy which she disputed. The tenant testified that she did not believe the landlords had valid grounds to end her tenancy, but because the hearing to address her dispute of the notice to end tenancy was not held until January 22 and the notice was effective on January 31, she was concerned that if she was unsuccessful in her dispute, she would not have sufficient time to pack her belongings to move. At the January 22 hearing, the parties agreed that the tenancy would end on January 26.

The tenant also seeks to recover 7% of the utilities paid during the tenancy. The tenant testified that when the tenancy began, the parties agreed that the tenant would pay 1/3 of the utility costs of the residential property, with the party who occupied the lower unit paying the remaining 2/3. The tenant testified that in 2005, the landlords approached her and stated that as fewer people would be living in the lower unit, they would like her to begin paying 40% of the utilities. The tenant testified that she reluctantly agreed at that time and paid 40% of the costs throughout the balance of the tenancy, but that she believed that the landlords should be held to the written agreement. The landlords argued that the verbal agreement of the parties should be binding.

Both parties seek to recover the filing fee paid to bring their respective application and the tenant also seeks to recover the \$100.00 filing fee paid to bring the previous claim.

Analysis

The landlord's claim does not seek any specific relief. Rather, at the hearing, the landlords confirmed that they brought the claim simply to put their rebuttal evidence before me. I advised the landlords at the hearing that they could have submitted their evidence in response to the tenant's claim and did not need to file their own claim. As the claim was not necessary, I dismiss the landlords' claim, including the request for recovery of their filing fee.

While the tenant may believe that the landlords had no grounds for serving her an eviction notice, the Record of Settlement resulting from the January 22, 2013 hearing shows that the tenant accepted that the tenancy would end. I understand that the tenant felt that it would be in her best interest to move rather than risk not being successful in disputing the notice to end tenancy and as a result having to move on short notice, but this is a decision she made and it is therefore her and not the landlords who should bear the financial consequences of that decision. I therefore dismiss the tenants' claim for moving expenses.

As the parties settled the issue of the amounts deducted from the security deposit, I award the tenant \$50.00 which represents the filing fee from the previous hearing that the landlords wrongfully withheld from the security deposit.

As a general rule, when parties put a term into writing, it is binding upon the parties until another written contract supersedes the first. However, in this case, both parties testified that they had a verbal agreement that the portion of the utility payments for which the tenant was responsible would increase to 40% given the change in the number of occupants in the lower suite. Although the tenant testified that she "reluctantly agreed", the fact still remains that she agreed and without proof that she

agreed under duress, I find that she is bound by that oral agreement. I therefore find that the tenant is not entitled to recover the 7% difference in utility payments and I dismiss that claim.

As the tenant has been almost entirely unsuccessful in her claim, I find that she must bear the cost of her filing fee.

Conclusion

The landlords' claim is dismissed.

The tenant has been awarded \$50.00 and I grant her a monetary order under section 67 for that sum. This 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: July 16, 2013

Residential Tenancy Branch

