



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD MNR FF

Introduction

This hearing was convened pursuant to an application by the tenants for return of the security deposit and other monetary compensation. The tenants and the landlord attended the teleconference hearing. The landlord informed me that he had also filed an application, which addressed the security deposit and other monetary compensation. As both applications were dealing with the same issues, I determined it was appropriate to join the two files and consider them both on the hearing date of November 19, 2013.

I have reviewed all testimony and other evidence regarding both applications. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on November 1, 2012, with monthly rent of \$1350 due in advance on the first day of each month. The tenancy agreement indicates that water, electricity, heat and cablevision were not included in the rent. At the outset of the tenancy, the tenants paid the landlord a security deposit of \$675.

On June 23, 2013 the tenants gave the landlord notice that they would be vacating the rental unit by the end of July 2013. On July 1, 2013 the tenants paid the landlord \$675 for half of July 2013, and indicated that they wished to have their security deposit applied as rent for the second half of July 2013. The landlord did not agree to apply the security deposit toward rent. On July 3, 2013 the landlord served the tenants with a

notice to end tenancy for failure to pay rent of \$675 that was due on July 1, 2013. The tenants vacated the rental unit on July 4, 2013.

Tenants' Claim

The tenants stated that on July 15, 2013 they sent the landlord their forwarding address in writing via registered mail. The landlord did not return the deposit or make an application to keep the deposit until November 8, 2013. The tenants have therefore applied for double recovery of the security deposit, as per section 38 of the Act.

The tenants applied for recovery of all of the hydro and water payments the tenants made during their tenancy, in the amount of \$362. The tenants submitted that the landlord was dishonest and unforthcoming regarding the utilities bills. In regard to the hydro bill, the tenants stated that the landlord presented them with a convoluted method of calculating the bills, which they did not understand. In regard to the water bills, the tenants did not recall that the water bill was their responsibility, until the landlord provided the tenants with a copy of their lease on April 29, 2013, and at that time the landlord also gave the tenants a copy of an addendum, which the landlord stated he meant for the tenants to sign at the time of signing the lease.

The tenants applied for \$1250 for loss of quiet enjoyment due to harassment they suffered after the landlord served the tenants with the July 3, 2013 eviction notice. The tenants stated that the landlord's behaviour was coercive and threatening, such that the tenants felt it necessary to call the police on July 3, 2013. More than one week after the tenants moved out, on July 4, 2013, the landlord called the employer of one of the tenants about their situation; the tenants felt that the landlord did not have the right to do this.

The landlord's response to the tenants' claim was as follows. The landlord stated that in regard to the security deposit, he believed the tenants owed him \$675 in rent and he owed the tenants \$675 for the security deposit, so it was not necessary for him to apply for recovery of the security deposit. The landlord stated that he did not receive anything about the security deposit until he received the tenants' application on November 6, 2013, because the tenants had initially sent the hearing package to the wrong address. In support of his position, the landlord submitted copies of three envelopes addressed to him: one envelope, date-stamped July 15, 2013, lacked the "B" following the street address; the second envelope, date-stamped August 19, 2013 and also lacking the "B" shows in the copy that it had been opened; the third envelope, date-stamped November 6, 2013, includes "B" in the street address.

In regard to the utilities bills, the landlord stated that the meters show exactly what each suite is using, and everyone is paying for exactly what they use. In regard to the water bills, the landlord stated that it was clear in the tenancy agreement that water was not included in the rent. The landlord denied that he was ever dishonest with the tenants.

In regard to loss of quiet enjoyment, the landlord stated that the tenants were trying to make him look like a monster, but he never harassed the tenants, he was just trying to get things done. The landlord acknowledged that things did get very heated between the landlord and the tenants at the end of the tenancy.

Landlord's Claim

The landlord claimed \$675 in rent for the latter half of July 2013, and \$275.30 in unpaid hydro and water bills. The landlord stated that he is only billing the tenants for utilities up to and including July 4, 2013, the last day that the tenants occupied the unit. The landlord acknowledged that he did allow new tenants to move in to the rental unit before their tenancy started on August 1, 2013, and he thought it was late in July 2013 but he was not sure when. The landlord stated that he did not charge the new tenants rent for their early move-in.

The tenants' response to the landlord's claim was as follows. The landlord allowed the new tenants to move in to the rental unit on July 14, 2013, and the tenants therefore should not have to pay rent for the second half of July 2013. As outlined in the tenants' claim, they believed that the landlord in fact overbilled the tenants for utilities, and they are therefore not responsible for the outstanding amount the landlord has claimed.

Analysis

Tenants' Claim

I find that the tenants are entitled to double recovery of the security deposit. The landlord stated that did not receive anything about the security deposit until he received the tenants' application on November 6, 2013. However, the landlord also submitted copies of two envelopes, one date-stamped July 15, 2013 and the other stamped August 19, 2013, in which the only "error" on the address was the lack of a "B" after the street address, and which the landlord must have in fact received in order to make copies and submit them as evidence. Further, the envelope date-stamped August 19, 2013, was clearly opened. I therefore find that the tenants did serve the landlord with their forwarding address in writing on July 15, 2013, and the landlord failed to either

return the deposit or make an application to keep the deposit within 15 days after receiving the forwarding address in writing.

I find that the tenants are not entitled to recovery of their hydro and water payments. The tenancy agreement clearly shows that electricity and water are not included in the rent. The tenancy agreement unfortunately does not establish the percentage of these bills that the tenants must pay; however, I am satisfied that the landlord and the tenants established within the first few months of the tenancy what percentage of these utilities the tenants must pay.

I also find that the tenants are not entitled to their full claim for compensation for loss of quiet enjoyment, as they are claiming for something they are only entitled to during their tenancy. In this case, the tenancy ended on July 4, 2013, one day after the tenants say they began to suffer loss of quiet enjoyment. Any problems that the landlord may have caused after the tenancy ended cannot therefore be construed as loss of quiet enjoyment of the rental unit. The landlord acknowledged that “things got very heated” between the landlord and the tenants on July 14, 2013, and I find that the landlord did act inappropriately on that date. I therefore grant the tenants a nominal amount of \$50 for loss of quiet enjoyment on that date.

Landlord's Application

I find that the landlord is not entitled to \$675 in lost revenue for the second half of July 2013. I accept the evidence of the tenants that new tenants moved into the rental unit on or about July 14, 2013. The landlord was unable to provide the date that he allowed the new tenants to move in, and he further failed to provide evidence that the new tenants did not pay any rent for the latter half of July 2013.

I find that the landlord is entitled to the amounts claimed for unpaid utilities. As set out above, I find that the landlord and the tenants established the percentage of the hydro and water for which the tenants were responsible by their actions regarding these bills in the first few months of the tenancy, and the tenancy agreement clearly shows the rent did not include electricity or water.

Filing Fees

As both applications were only partially successful, I find neither party is entitled to recovery of their respective filing fees.

Conclusion

The tenants are entitled to \$1400. The landlord is entitled to \$275.30. I therefore grant the tenants a monetary order for the balance of \$1124.70. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: December 16, 2013

Residential Tenancy Branch

