Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNDC, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and her assistant.

At the outset of the hearing the landlord sought an adjournment to have the hearing reconvened as a face to face hearing due to her hearing difficulties. The tenant objected to a hearing as she indicated she had no ability to attend an in person hearing due to her location.

The landlord had brought her son-in-law to assist her to ensure that she heard everything and as both were available to conduct the hearing at the time I found the landlord would not prejudiced by proceeding with the hearing on the conference call.

Also at the start of the hearing the tenant questioned whether or not the landlord should have been allowed to file her Application because the tenancy ended on November 30, 2011 and the landlord applied on November 8, 2013. The tenant submits that because the tenancy ended on November 30, 2013 the landlord should have applied prior to October 31, 2013.

Section 60(1) of the *Act* states that if the *Act* does not state a time by which an Application for Dispute Resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends.

As the tenancy ended on November 30, 2013 I find that the landlord had 2 years from that date or until November 30, 2013 to file her Application for Dispute Resolution.

Section 60(3) states that if an Application for Dispute Resolution is made by a landlord or tenant within the applicable limitation period under the *Act*, the other party to the dispute may make an Application for Dispute Resolution in respect of a different dispute

between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Even if I had found the landlord had not filed her Application within the 2 year period as required by Section 60(1) because the tenant had filed her Application within the 2 year period and the matter had not yet been concluded on November 8, 2013 the landlord would have still been allowed to file her Application in accordance with Section 60(3).

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and utilities; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenant is entitled the return of double the amount of the security deposit and compensation for damage to personal property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

The parties agree the tenancy began in September 2011 for a monthly rent of $1,450.00 due on the 1st of each month with a security deposit of $725.00 paid. The tenancy ended on November 30, 2011.

The landlord submits that the tenant had provided her a rent cheque for a pro-rated amount of rent for the month of September 2011 in the amount of $1,285.00 and that on September 9, 2011the cheque was returned to the landlord resulting from insufficient funds in the tenant's account.

The landlord submits the tenant never provided the landlord with a reimbursement for the dishonoured cheque. The tenant referred to the banking statement provided as evidence by the landlord and stated that entries made on August 29, 2011 were in fact her cash payments to the landlord for reimbursement of the dishonoured cheque.

The two deposits made to the landlord's account on August 29, 2011 were in the amounts of $533.70 and $966.30 or a total of $1,500.00. The tenant testified that it included an extra $25.00 for the inconvenience to the landlord. The descriptions of the deposits that were recorded on the statement were "Direct Deposit – Canada".

The landlord also seeks payment for utility bills in the amounts of $150.97 for the period September to October 2011 and $302.56 for the period October to November 30, 2011. The landlord has provided ledgers showing the calculations to determine the utility amounts owed.

The tenant submits that although she entered into the tenancy agreement with the landlord in early September 2011 she did not move into the rental unit until September 24, 2011because the landlord had not completed some work in the rental unit. The tenant submits that as a result she should not have to pay any utilities for that period. The landlord testified that that tenant moved into the rental unit beginning on September 3 or 4th.

The tenant further testified that she shouldn't have to pay these utility amounts because they were costs shared not only with another tenant but with the landlord herself and were used in part for the renovations the landlord was making to her rental unit.

The tenant submits that she provided the landlord with her forwarding address when they completed the move out condition inspection and has provided into evidence a copy of the Condition Inspection Report showing the tenant's forwarding address. The tenant seeks return of double the security deposit.

The tenant also seeks compensation in the amount of $20.00 to replace a lawn ornament that was damaged by the landlord's son while he was doing some work on the property. The tenant described the ornament as a solar light for external yard use. The tenant provided no documentary evidence establishing value of the solar light.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

However, in relation to the landlord's claim for unpaid rent, I find the tenant's credibility disallows me from finding that her version of events is equally probable to the landlords. I find the tenant provided the landlord with a cheque for rent in the amount of $1,285.00 that was not negotiable. I also find that the tenant's testimony to counter the landlord's claim is not credible at all for the following reasons:

1. The tenant testified that she reimbursed the landlord in cash as shown in the landlord's bank statement where it recorded two deposits on August 29, 2011. I find it extremely unlikely that the tenant would provide cash to the landlord three

weeks **prior** to the return of dishonoured cheque on September 9, 2011 as a "repayment" for the dishonoured cheque;

2. The tenant testified that she provided the landlord two individual cash payments as shown by the deposits made to the landlord's account on August 29, 2011but the deposits noted by the tenant are not as direct deposits from the government of Canada.
3. The tenant testified that she included an extra $25.00 in the two cash payments as compensation for the landlord's troubles. The total of the two deposits of August 29, 2011 was $1,500.00 yet the amount owed by the tenant was $1,285.00. If the tenant had paid the landlord the amount of the dishonoured cheque plus $25.00 the repayment would have only been $1,310.00

Because there was absolutely nothing credible in her testimony regarding the payment of September 2013 rent, I find I cannot rely on any of her testimony regarding the issues she has raised related to her portion of the utility costs.

I find the landlord has established the tenant has failed to pay utility costs that were her responsibility during the tenancy. I also find the landlord has provided sufficient evidence through her ledgers to confirm the tenant owed the amount as claimed by the landlord.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlord had been provided with the tenant's forwarding address when the Condition Inspection Report was completed on November 30, 2011 I find the landlord has failed to comply with Section 38(1) as she has not returned the deposit or filed an Application for Dispute Resolution seeking to claim from the deposit. As such I find the tenant is entitled to return of double the amount of the security deposit.

While I accept, based on the testimony of both parties, that the landlord's son caused damage to the tenant's lawn ornament I find the tenant has provided no evidence to establish the value of the loss and I therefore dismiss this portion of the tenant's Application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$338.53** comprised of $1,285.00 rent owed; $453.53 utilities owed and the $50.00 fee paid by the landlord for this application as she was successful in her claim less $1,450.00 for return of double the security deposit to the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As the tenant was only partially successful in her Application I dismiss the portion of her Application seeking to recover the filing fee.

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: November 28, 2013

Residential Tenancy Branch