



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, 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 landlord; her agent; and the tenant.

At the outset of the hearing I noted that the applicants named in the landlord's Application included a name not provided in the tenancy agreement as a landlord. As such, I amended the landlord's Application to exclude the second named applicant.

The parties confirmed the landlord did not provide copies of their photographs submitted to the Residential Tenancy Branch for evidence to the tenant. I advised the parties that I was therefore not able to consider the landlord's photographs for this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; for damage to the rental unit and carpet cleaning; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for double the amount of the security deposit 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

Both parties provided a copy of a tenancy agreement signed by the parties on August 31, 2012 for a 3 month fixed term tenancy beginning on August 31, 2012 that converted to a month to month tenancy beginning on November 30, 2012 for a monthly rent of

\$2,050.00 due on the 1st of each month with a security deposit of \$2,050.00 paid. The tenancy ended on December 31, 2012.

The landlord testified that a move in condition inspection was completed at the start of the tenancy but that no report was completed. The landlord also testified that no move out condition inspection was completed.

The landlord seeks compensation for unpaid utilities including hydro in the amount of \$174.88. The tenant submits that she acknowledges that she owes the landlord for hydro and did not dispute this amount.

The landlord seeks compensation for unpaid cable utility in the amount of \$50.36 which includes service up to and including the period December 25, 2012 to January 10, 2013 in the amount of \$56.94. The landlord submits that the cable company actually charged them until the end of January 2013 because they did not give their notice to the cable company until December 10, 2012. The cable service was registered in the landlord's name.

The landlord's also seek compensation for carpet cleaning in the amount of \$186.48, because the tenant had not cleaned the carpeting and there were stains. The tenant submits that the stains were in the carpet when she moved into the rental unit.

The landlord seeks costs incurred for repairing and painting walls in the amount of \$1,400.00. The tenant submits that there was no damage to the walls of the rental unit that would have required painting.

The landlord claims \$3,087.00 for replacement countertops due to a stain on a section of the countertop. The landlord described the stain as about the size of a hand and that it appears to be in the shape of a cooking pot. The tenant testified that because she did not have the pictures the landlord has submitted into evidence she could not comment on any stains on the countertop.

The tenant testified that she provided the landlord's mother (agent) verbally on December 29, 2012 or December 31, 2012 and that she wrote it down in her book at that time. The landlord testified that the tenant did not provide her forwarding address in writing until the landlord received a copy of the tenant's Application for Dispute Resolution on August 23, 2013. The landlord confirmed she submitted her own Application for Dispute Resolution seeking to claim against the deposit on September 17, 2013.

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.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As the landlord has provided no evidence to confirm the condition of the rental unit at the start of the tenancy I find the landlord cannot establish that any damage to the rental unit was caused during the tenancy.

As the landlord has failed to provide any evidence, that I can consider, as to the condition of the rental unit at the end of the tenancy I find the landlord has failed to establish the need for any cleaning required in the rental unit including carpet cleaning.

For the above reasons, I dismiss the portion of the landlord's claims seeking compensation for carpet cleaning; painting; and countertop replacement.

I accept, based on the tenant's testimony that she does not dispute she owes the landlord for hydro. I am satisfied that the amount claimed by the landlord reflects the amount owed.

I am also satisfied that tenant owes for cable services, however as the tenancy ended on December 31, 2012 I find the landlord can only claim cable services to that date. Based on the amount claimed for the period December 25, 2012 to January 10, 2013 I find the per diem rate to be \$3.55. As such, for the period from December 25, 2012 to December 31, 2012 I find the landlord is entitled to recover \$21.35.

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 in writing, 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.

Despite the landlord charging the tenant a security deposit that was double the allowable amount under the *Act*, I have treated the full amount as a security deposit for the purposes of this decision because both parties clearly identified the amount as a security deposit and the landlord still holds the full amount collected.

While the tenant submits that she verbally gave the landlord's agent her forwarding address Section 38 requires it be provided in writing before the landlord is obliged to follow the requirements under Section 38(1). As such, based on the testimony of both

parties I find the tenant did not provide the landlord with her forwarding address as required under the *Act* in December 2012.

However, based on the testimony and submissions of the landlord I find the landlord received the tenant's forwarding address in writing on August 23, 2013 when they received the tenant's Application for Dispute Resolution and as such the landlord had until September 7, 2013 to file an Application or return the deposit to be compliant with Section 38(1).

Even if I were to allow the landlord to file her Application on the next business day because September 7, 2013 was a Saturday the landlord was required to file her Application no later than September 9, 2013. As the landlord filed her Application on September 17, 2013 and has not yet returned the security deposit to the tenant I find the landlord has failed to comply with the requirements under Section 38(1) and the tenant is entitled to the return of double the amount of the deposit, pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,952.77** comprised of \$4,100.00 double the security deposit and the \$50.00 fee paid by the tenant for this application less \$175.88 for hydro and \$21.35 for cable.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: November 26, 2013

Residential Tenancy Branch

