



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TENANT: MNSD, MNDC
LANDLORD: MNSD, MNR, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for unpaid rent or utilities, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security deposit and for compensation for loss or damage under the Act, regulations or tenancy agreement.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on November 22, 2013, in accordance with section 89 of the Act. The Tenant said they received the Landlord's hearing package as stated.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on November 16, 2013, in accordance with section 89 of the Act. The Landlord said they received the Tenant's hearing package as stated.

Issues to be Decided

Landlord:

1. Is there unpaid rent or utilities and if so how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenant's deposits?

Tenant:

1. Is the Tenant entitled to receive double the security deposit?

Background and Evidence

This tenancy started on August 3, 2013 as a month to month tenancy. Rent was \$1,100.00 per month payable at the end of each month. The Tenant paid a security deposit of \$550.00 on July 15, 2013. The Landlord and Tenants both agreed that there was no move in or move out condition inspection reports completed. The Tenant said she sent her forwarding address in writing to the Landlord by registered mail on October 11, 2013.

The Tenant said the tenancy ended because of a 2 Month Notice to End Tenancy for the Landlord's use of the property. The Notice to End Tenancy is dated August 22, 2013 and the effective vacancy date is October 31, 2013. The Tenant said she moved out of the rental unit on September 28, 2013 and she did not pay the September rent as the Notice to End Tenancy indicates that the Landlord must compensate the Tenant one month's rent. The Tenant said she took the rent compensation for the month of September, 2013. As a result the Tenant said there is no unpaid rent for this tenancy. The Tenant continued to say she has unpaid utilities which she is willing to pay, but until the hearing she did not know the amount of utilities she was responsible for.

The Tenant continued to say the Landlord has not returned her deposit and so she has applied for double the security deposit as indicated in the Act.

The Landlord said he was new to all this information. He continued to say he believes the Tenant should have moved out at the end of October, 2013 as the Notice to End Tenancy says and therefore the October rent was free and the Tenant should pay the September rent. The Landlord said there is \$1,100.00 in unpaid rent.

As well the Landlord said there is \$42.00 in unpaid Hydro bills and \$25.00 in unpaid gas bills. The Landlord said he included the utility bills in his hearing package. The Tenant said she is will to pay the utility bills as indicated by the Landlord.

Analysis

Tenant's compensation: section 49 notice (2 Month Notice to end Tenancy for Landlord's Use of the Property)

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or **before** the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Consequently I find that the Tenant was entitled to withhold the September, 2013 rent of \$1,100.00 as compensation for the 2 Month Notice to End Tenancy for the Landlord's Use of the Property. The Act indicates the compensation is due on or before the effective date of the notice therefore the October, 2013 rent is not a factor in this tenancy as the tenancy ended on September 29, 2013. I find there is no unpaid rent and I dismiss the Landlord's claim for unpaid rent without leave to reapply.

With respect to the unpaid utilities, both parties agree the Tenant is responsible for \$42.00 for hydro and \$25.00 for gas; therefore I award these amounts to the Landlord.

Further: Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

I find from the evidence and testimony the Tenant did give the Landlord a forwarding address in writing by registered mail on October 11, 2013. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution within the time limits to do so. Consequently I find for the Tenant and award the Tenant's claim for double the security deposit of \$550.00 in the amount of \$1,100.00.

Consequently I award the Tenant a monetary Order for double the security deposit in the amount of \$1,100.00 less the unpaid utilities in the amount of \$67.00. The Tenant will receive a monetary Order for \$1,033.00

As the Landlord was only partially successful in his application I order the Landlord to bear the cost of the filing fee of \$50.00 which he has already paid.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 of the Act, I grant a Monetary Order for \$1,033.00 to the Tenant. The order must be served on the respondent and is enforceable through the Provincial Court 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: February 24, 2014

Residential Tenancy Branch

