



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on September 1, 2013 and continue for 3 month ending on November 30, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$520 per month payable on the first day of each month. The tenant paid a security deposit of \$260 at the start of the tenancy.

In early October the tenant gave the landlord a letter dated September 26, 2013 that stated that he wished to end the tenancy on November 30, 2013 but if possible he would like to terminate the lease earlier.

The tenant testified he experienced significant problems with a lack of heat and a lack of hot water in the rental property. The landlord disputes much of the tenant's evidence.

Tenant's Claim:

The tenant seeks compensation in the form of reimbursement of two month rent for the lack of heat and the lack of hot water in the rental unit. He testified that there was not heat at all for a 7 day period in early October. A technician was called but was not able to fix it immediately. Further, problems relating to the lack of heat re-occurred throughout the balance of October. The tenant vacated the rental unit at the end of October.

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement

After hearing the disputed evidence of the parties I determined there was a problem with the heat and the hot water in the rental unit and this significantly affected the tenant's enjoyment of the rental unit. However, I determined the tenant failed to prove that his illness was caused by the lack of heat. In the circumstances I determined that the tenant is entitled to compensation in the sum of \$200 for the months of September and October. In coming to this determination I considered the degree of discomfort from a lack of heat would be more significant in October than in September.

The tenant also makes a claim for the return of the deposit. However, the tenant failed to provide the landlord with his forwarding address prior to filing the Application for Dispute Resolution as required by the Residential Tenancy Act. As a result the tenant is not entitled to an order relating to the deposit in the tenant's claim. However, this may be considered in the context of the landlord's claim.

In summary I determined the tenant has established a claim against the landlord in the sum of \$200.

Landlord's Claim:

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set

out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I dismissed the landlord's claim in the sum of \$50 for the cost of cleaning as the landlord failed to provide sufficient proof to establish the tenant failed to adequately clean the rental unit when he left.
- b. The landlord claims the sum of \$520 for loss of rent for the month of November. The tenant vacated the rental unit at the end of October. However, the landlord was on vacation at this time. The landlord made no effort to re-rent the premises until after he had returned from vacation on November 10, 2013. Further, the landlord failed to provide the tenant with the name of an agent that would act on behalf of the landlord when the landlord was absent. I determined the landlord has failed to sufficiently mitigate his loss. The tenant should not bear the burden of the landlord failing to provide the tenant with a contact person. The landlord phoned the tenant on November 10, 2013 and was told at that time the tenant was not returning. He was able to rent the premises for December 1, 2013. In the circumstances I determined the landlord is entitled to \$260 for the loss of one half of a month rent.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$260 plus the \$50 filing fee for a total of \$310.

Security Deposit

I determined the security deposit plus interest totals the sum of \$260. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$50.

Summary:

I determined the tenant has established a claim against the landlord in the sum of \$200. I determined the landlord has established a claim against the tenant in the sum of \$50 (after retaining the security deposit of \$260). **After setting off one claim against that of the other I ordered that the landlord shall pay to the tenant the sum of \$150.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: February 25, 2014

Residential Tenancy Branch

