



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the tenant's application for recovery of the security deposit and other monetary compensation. The hearing convened over three dates: November 12, 2013; January 13, 2014 and March 6, 2014. The tenant appeared in the teleconference hearing on all three dates. The landlord appeared on the first two dates, on the second of which he was assisted by an articling student. On the third date, only counsel for the landlord appeared.

The hearing was adjourned on the first two hearing dates to address issues of service of the application and evidence. On the third date, the parties confirmed that they had received the other party's evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Landlord's Submissions to Dismiss

On the second and third dates of the hearing, the landlord's legal representatives submitted that the tenant's application should be dismissed because the tenant failed to serve the landlord with the application or evidence within the required timeframe. On both dates, I informed the landlord that I had dealt with potential procedural fairness issues when I adjourned the hearing and allowed the parties to re-serve and respond to evidence.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on April 1, 2011, with monthly rent of \$1600. At the outset of the tenancy the tenants paid the landlord a security deposit of \$800. The parties did not carry out a move-in inspection or complete a move-in condition inspection report. The parties agreed that on or about April 16, 2011 an incident occurred in the rental unit where some water leaked from the washing machine and caused some damage. The tenancy ended on September 30, 2011. The parties did not carry out a move-out inspection or complete a move-out condition inspection report. The landlord did not return the security deposit or make an application to keep the security deposit.

Tenant's Claim

In regard to his claim for double recovery of the security deposit, the tenant stated that on September 30, 2011 he attempted to hand-deliver his written forwarding address to the landlord, but the landlord would not take it, so the tenant left it on the kitchen counter, about three or four feet from the landlord. In support of his application, the tenant submitted a copy of the written forwarding address that he stated he served on the landlord. The tenant stated that he did not give the landlord written consent to withhold any portion of the security deposit, and the landlord did not make an application to keep the security deposit.

The remainder of the tenant's claim related to losses that arose resulting from the washing machine leak. The tenant claimed as follows:

- \$3360 for loss of use of the dishwasher from April 16 to August 10, at \$20 per day – the tenant's evidence was that the dishwasher was disconnected when the flood happened, because the wiring for the dishwasher was hooked illegally into the 220 V dryer receptacle and the inspector unplugged it;
- \$800 for loss of use of the basement and garage from April 16 to May 15 – the tenant calculated this amount as half of the rent for one month, representing the half of the useable area of the rental unit that the tenant could not use after the flood. The tenant's evidence was that he had to put all contents of the basement in the garage, which made the garage unusable;
- \$80 for hydro costs – From April 16 to April 25, immediately following the flood, dehumidifiers and air movers had to be run. The tenant stated that the insurance company would reimburse the tenant for the cost of running the machines. The tenant calculated this amount at \$1 per machine for 8 machines running for 10 days;

- \$50 for loss of use of washer and dryer from April 16 to May 15 – the tenant stated that because of the cleanup and construction, they had to carry their laundry next door to the tenant's father's house; and
- \$400 for unpacking again after the flood work was done – the tenant this amount based on their labour at \$26.67 per day for 15 days.

Landlord's Response

In regard to the return of the security deposit, the landlord submitted that there is no confirmation or evidence that the landlord was served the forwarding address in writing.

In regard to the remainder of the tenant's claim, the landlord responded as follows. The landlord submitted that the laundry room was not part of the rental unit and the tenant was forbidden from using the laundry. In regard to the incident on April 16, 2014 when the washing machine flooded, the landlord submitted that the tenant was negligent in not being present while doing the washing. The landlord submitted that when the flood occurred, the landlord responded as required under section 33 of the Act.

Analysis

In regard to the security deposit, I find that the tenant's evidence regarding serving the landlord with the written forwarding address on September 30, 2011 is reliable and credible. I find, on a balance of probabilities, that the tenant did serve the landlord with his forwarding address in writing on September 30, 2011, and because the landlord did not return the deposit or make an application to keep the deposit, the tenant is entitled to double recovery of the deposit, in the amount of \$1600.

In regard to the remainder of the tenant's claim, I find as follows. There is no indication in the tenancy agreement that the tenant was forbidden access to the laundry facilities. The landlord's submission that the flood occurred due to the tenant's negligence is unrealistic and entirely without merit. I accept that the landlord did respond appropriately to the flood; however, I also find that the tenant suffered losses, including loss of use of some appliances and part of the floor space of the rental unit, while the repair work was underway. Because the tenancy was devalued for that period of time, the tenant is entitled to some compensation. In response to the specific amounts claimed, I find as follows:

- \$3360 for loss of use of the dishwasher from April 16 to August 10 – I find the tenant is not entitled to this amount. The tenant did not provide sufficient evidence to show that he mitigated his loss of use of the dishwasher by

informing the landlord of the problem in writing at the time, so that the landlord could address the problem immediately.

- \$800 for loss of use of the basement and garage from April 16 to May 15 – I accept the tenant's evidence that he lost use of a portion of the basement for a period of time. However, I am not satisfied that the tenant has provided sufficient evidence to establish that the amount of space that was unusable comprised half of the floor space of the rental unit, or what use the tenant made of that space prior to the flood. It was also not clear, from the tenant's evidence, whether he could have mitigated his loss by moving his possessions back into the basement more quickly. I therefore only grant the tenant a nominal award of \$100 for the loss of use of the basement and garage.
- \$80 for hydro costs – I accept the tenant's evidence that his hydro bills would have increased while the dehumidifiers were running; however, the tenant did not submit any hydro bills to clearly show the increase in hydro for the time period claimed. I therefore grant the tenant a nominal amount of \$40 for increased hydro.
- \$50 for loss of use of washer and dryer from April 16 to May 15 – I accept the tenant's evidence that he lost use of the washer and dryer; however, he was easily able to remedy this situation by doing laundry next door at the female tenant's father's house. The tenant did not establish that he suffered any monetary losses, such as an amount of money he had to pay to his father-in-law for use of their laundry. I therefore decline to grant the tenant any compensation for this amount.
- \$400 for unpacking again after the flood work was done – I find that this portion of the tenant's claim is unreasonable. The tenant failed to establish the volume of unpacking that was required or whether the work could have done the work more quickly and less expensively, perhaps even by a professional. I therefore dismiss this portion of the tenant's claim.

As the tenant's application was partially successful, I find that he is entitled to partial recovery of his filing fee, in the amount of \$50.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$1790. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the tenant's application 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: April 2, 2014

Residential Tenancy Branch

