



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary order and an order for the return of the security deposit. The hearing was conducted by conference call. The tenants and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for a portion of utility payments?

Are the tenants entitled to damages for "False termination of Lease"?

Are tenants entitled to the return of their security deposit including double the amount of the deposit?

Background and Evidence

The rental unit is one half of a side by side duplex. The tenants rented the upper portion of duplex and there is a smaller one bedroom rental unit in the lower portion of the unit. The tenancy began in 2006. The tenant said that he paid a security deposit of \$675.00 at the start of the tenancy. The tenancy ended pursuant to a two month Notice to End Tenancy given by the landlord. Neither party submitted a copy of the Notice to End Tenancy. The tenant said that they moved out of the rental unit pursuant to the Notice to End Tenancy at the end of July, 2012, but the landlord testified that the tenants did not leave until September 8, 2012 and only after many calls and requests to have them moved. The landlord said that because the tenants did not move at the end of July, he was forced to find other accommodation and incurred extra expense to do so.

The tenant testified that he paid the gas and electric utilities for the rental property, including the utilities for the separate rental unit in the lower part of the duplex. He said that the landlord was supposed to repay 33% of the utilities to the tenants, but that he never made the payments despite the tenant's many requests. The tenant submitted a list of monthly utility charges dating back to February, 2006 for gas bills and to June,

2006 for electricity charges.. The tenant said that he made many requests of the landlord trying to get him to pay his share of the utilities, but the landlord always refused or told him that it was “too late”.

The tenant said that he did not pursue his claim for utilities during or soon after the tenancy ended because he was very busy with work and his business. He testified that he sent a letter to the landlord by registered mail. The letter was dated May 14, 2013 and was addressed to the landlord and to his wife at the address of the duplex adjacent to the rental unit. The tenant submitted a letter from the landlord dated May 22, 2013, apparently sent in response to the tenants’ letter. In the letter the landlord told the tenants that he has a claim for damages against the tenants for damage to the rental unit and for their failure to move out on July 31, 2012, as required by the Notice to End Tenancy.

In the application for dispute resolution the tenants claimed a monetary order in the amount of \$9,434.05. The tenants did not provide a detailed monetary calculation to show how they arrived at the amount claimed. The claim included a claim for one third of the utility bill dating back to the inception of the tenancy in 2006, and additional amounts for the security deposit and an amount claimed for “false termination of lease”.

The landlord testified that the initial security deposit was \$600.00, not \$675 as stated by the tenant. The landlord said that he did not receive the tenants’ letter dated May 14, 2013. He said that he does not live at the address where it was sent and did not live there when the letter was mailed. The landlord said that his ex-wife lives at the mailing address and he learned of the letter through a telephone conversation with her, but has never seen the letter himself.

Analysis

The tenant maintained that the landlord was obliged to pay one third of the utilities throughout the tenancy, but has consistently refused to pay them. The landlord said that there was never such an agreement; he said the rent paid by the tenants was discounted to reflect the fact that the tenants were paying utilities for the whole of the rental property. He noted the course of conduct of the parties over the five year term of the tenancy and the fact that the tenants accepted and paid two rent increases without complaint. The tenant said the landlord was required by the tenancy agreement to pay one third of the utilities, but he did not provide any documentary evidence to support his position. The landlord denied that there was an agreement that required him to pay part of the utility bills.

The tenants bear the burden of proving, on a balance of probabilities, that they are entitled to the relief claimed in the application. The tenant has not provided evidence of

a written agreement requiring the landlord to pay part of the utilities. In the absence of a written agreement, evidence to establish what may have been agreed upon may be discovered by examining the course of conduct of the parties during the term of the agreement; in this case there is no evidence that the landlord ever paid part of the utilities or acknowledged any responsibility to pay them. There is no evidence to show that the tenants ever made a written request or demand for payment of utilities at any time during the tenancy. If there was an agreement that the landlord pay part of the utilities, then I would expect to see some steps by the tenant to enforce such an obligation soon after the tenancy began. The first written assertion of a claim was made in May, 2013, more than six years after the tenancy began and almost one year after the tenancy ended. I find that the tenants have not shown that the landlord agreed to pay part of the utilities or that he is otherwise required to pay them; this part of the tenants' claim is dismissed without leave to reapply.

The tenants claim to be entitled to an award of damages because the landlord ended the tenancy for an improper reason. The tenants did not provide a copy of a Notice to End Tenancy given by the landlord. In the absence of a copy of a Notice to End Tenancy and in the absence of evidence with respect to the grounds for ending the tenancy or of the use made of the rental unit for a reasonable period after the notice was given, I find that the tenant has not proved that the landlord gave the tenants an improper Notice to End Tenancy that would require the payment of compensation under the *Residential Tenancy Act*. This claim is also dismissed without leave to reapply.

The tenants have requested payment of their security deposit. Based on the evidence of the parties, I find that the tenants paid a security deposit of \$600.00 at the commencement of the tenancy on or about June, 2006, noted as the move-in date on the electrical billing history submitted by the tenants. I prefer the landlord's evidence as to the amount of the deposit because it appears to be an amount that is half the initial rental amount and the tenants did not challenge the landlord's testimony as to the amount of the deposit at the hearing.

Based on the evidence submitted by the tenants I accept that the tenants gave notice to the landlord of their forwarding address by letter dated May 14, 2013. The landlord was aware of the letter and of the request. Even if the landlord did not physically receive the letter, he was aware of its contents and the letter was given to his wife, or ex-wife, who was a person who also acted as landlord at some point during the tenancy. I note that the landlord responded in writing to the letter and that the tenants received the landlord's letter.

The landlord has said that he has claims against the tenant for damage to the rental unit and for the tenants' alleged failure to vacate the rental unit on the effective date of the Notice to End Tenancy. Based on the evidence provided, I find that the landlord

received the tenants' forwarding address, but did not make a claim against the security deposit.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenants provided the landlord with her forwarding address in writing, and I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenants' application with respect to the deposit and award them the sum of \$1,219.96; this amount is double the original deposit plus interest of \$19.96 that accrued on the original deposit.

Conclusion

Because the tenants have been unsuccessful with respect to the larger of their claims in this proceeding and because of the extensive delay in bringing this proceeding I decline to award recovery of the filing fee for this application. I grant the tenants a monetary order against the landlord in the amount of \$1,219.96. This order may be registered in the Small Claims Court and enforced as an order of that Court. All other claims in the application are dismissed without leave to reapply.

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 24, 2014

Residential Tenancy Branch

