Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MNSD, MNDC, FF
Landlord: MNSD, MNR, FF

Introduction

This hearing was convened in response to cross-applications by both parties pursuant to the *Residential Tenancy Act* (the Act)

The tenant filed on **March 17, 2014** for Orders as follows:

1. An Order for return of security deposit - Section 38
2. A monetary Order for damage / loss – Section 67
3. An Order to recover the filing fee for this application - Section 72.

The landlord filed on **June 13, 2014** for Orders as follows;

1. A monetary Order for damage / loss – Section 67
2. A monetary Order for Unpaid utilities – section 67
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, present *relevant* evidence, and make *relevant* submissions. The tenant was assisted by their legal advocate. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The landlord acknowledged receiving the evidence of the tenant. The tenant did not receive the evidence of the landlord – received by this hearing - as they moved from the forwarding address previously provided to the landlord without informing them. I accept the landlord's evidence as they sent it to the tenant to the address provided by them and within the prescribed time to do so. None the less, it must be noted that the landlord provided the same evidence as the tenant provided, as well as a copy of the tenancy agreement with which the parties agreed as to the contents. In addition, the parties were permitted to provide their evidence orally, and the other party had opportunity to respond. The parties were apprised that only *relevant* evidence would be considered in the Decision.

The tenant withdrew their claim for *personal grievance* compensation.

The tenant clarified their claim for *moving costs,* which I accepted as a claim of compensation reflecting a reduction in value of the tenancy - rent abatement.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The tenancy of this matter ended December 01, 2013. The undisputed evidence in this matter is as follows. The tenancy began August 01, 2013 as a written tenancy agreement. The parties agreed the rental unit was the basement suite portion of a residential house. At the outset of the tenancy the landlord collected a security deposit in the amount of $425.00 which the landlord retains in trust. During the tenancy the payable rent was in the amount of $850.00 due in advance on the first day of each month and the tenant was further responsible for *one third* of utilities. The parties agree there was a mutual *move in* inspection conducted by the parties although the hearing did not have benefit of the requisite recording of the results / report. The parties did not provide particulars of a *move out* condition inspection. Regardless, the parties did not agree as to how the security deposit was to be administered at the end of the tenancy. The parties agree that on November 30, 2013 the landlord was provided the tenant's forwarding address in writing.

Tenant's application

The tenant seeks compensation pursuant to Section 38 of the Act for double the original security deposit amount.

The landlord acknowledges they received the tenant's forwarding address in writing November 30, 2013. The landlord testified that they determined that the tenant was not entitled to return of their security deposit as the tenant owed utilities to the end of the tenancy period. The tenant testified that they indeed owe the landlord an amount of utilities representing one third of the calculated *actual usage*, however, they dispute the landlord's claim as their amount is calculated based on *equal payment installments*. The tenant claims they estimate they owe the landlord $61.00 for the gas utility. The landlord claims they are owed $275.00 for the *gas* utility *and* the *electricity* utility combined. Neither party provided utility bill invoices subsequent to September 2013.

The tenant further seeks compensation for a devaluation of the tenancy or reduction in the value of the tenancy because of certain deficiencies in the unit, which they claim, ultimately motivated them vacating the unit. The tenant provided photographs of a hole into the unit from the exterior, the size of a l*oonie ($1)* coin. The parties agree as to the existence of the hole. The tenant claims they asked the landlord to repair it at the

outset of the tenancy and did not. The landlord claims they had agreement with the tenant to repair it before the tenant was to repaint the subject wall – for which the landlord provided the cost of paint. The tenant disputed the landlord's version, stating they paid for the paint, and that the landlord was to repair the hole. The tenant testified they covered the hole with tape in the interim. The tenant claims the hole contributed to heat loss and was unsightly. The tenant also testified that the weather stripping for the entrance door was compromised and allowed air and *bugs* to enter the unit and possible other pests. The landlord denies the tenant's claims.

Landlord's application

As addressed in the tenant's application, the landlord seeks unpaid gas and electricity utilities, to the end of the tenancy, in the amount of $275.00. The landlord provided a gas utility invoice, and a partial electricity utility invoice. Both invoices represent billing particulars of an equal installments payment system based on annual usage. The tenant agued that their occupancy was during the lowest months of usage, and therefore they should not be responsible for utilities according to the landlord's calculations based on equal installments.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.rto.gov.bc.ca.

The onus is on the respective parties to prove their claims, on balance of probabilities. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Landlord's claim

I accept the landlord's claim for both, gas and electricity utilities. However, I find that I prefer the tenant's evidence in respect to their mode of calculation of what the landlord is owed for utilities. I find the tenant did not address the landlord's entire claim for *both* utilities. I further find that the landlord has not provided sufficient evidence of what the *actual* usage for electricity was for the months of August to November 2013. None the less, I accept that the tenant is responsible for one third usage of all utilities including electricity. As a result, while I accept the tenant's evidence that the landlord is owed $61.00 for gas utility to the end of the tenancy, I grant the landlord nominal $25.00 per month for all unpaid electricity utility, in the combined amount of $100.00 - for a sum award of **$161.00**.

Tenant's claim

Section 38(1) of the Act provides as follows (emphasis added):

> **38**(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> 38(1)(a) the date the tenancy ends, and
>
> 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord **must** do one of the following:
>
> 38(1)(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;
>
> 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord was in possession of the tenant's written address on the day the tenant vacated: December 01, 2013. I find that the landlord failed to repay the security deposit in full, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

> 38(6) If a landlord does not comply with subsection (1), the landlord
>
> 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
>
> 38(6)(b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In the absence of filing an application for dispute resolution, the landlord was obligated under Section 38 to return the original deposit amount of $425.00. Therefore, the amount which is *doubled* is the original $425.00 of the deposit. As a result I find the tenant has established an entitlement claim of **$850.00**.

I find that in the absence of a *move in* and *move out* condition inspection report; on balance of probabilities I prefer the evidence of the tenant in respect to the claimed deficiencies of the unit. I find that the tenant experienced an unattended and unrepaired hole into the unit; and, the compromised weather stripping further devalued the tenancy agreement or reduced the value of the tenancy. For these deficiencies I grant the

tenant a rent abatement of $25.00 for each of the 4 months of occupancy of the unit in the aggregate of **$100.00.**

As both parties are entitled to their filing fees they mathematically cancel each other, therefore I make no award for filing fees.

As a result of all the above - Calculation *for Monetary Order:*

tenant's award – double security deposit	$850.00
tenant's award – rent abatement	100.00
minus landlord's award	***- $161.00***
Monetary award for tenant	**$789.00**

Conclusion

The parties' respective applications, in relevant part, have been granted. The balances of all claims are **dismissed**, without leave to reapply.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **$789.00.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: July 21, 2014

Residential Tenancy Branch