



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MNSD, SS, FF, O

For the tenant -MNSD, CNC, OLC, FF, O

Preliminary Issues

Two tenants had filed an application against the landlord and the landlord had filed her application naming the same two tenants. At the outset of the hearing it was determined that the tenants rented rooms in this unit under separate verbal agreements with the landlord. As such I advised the parties to separate their claims. The parties decided that the tenant AB would precede with the tenant's application for this hearing and the other tenant TT would withdraw from this application and file a separate application against the landlord. The landlord agreed to separate her application and proceeded at this hearing against AB. The landlord will file a separate claim against TT if required. TT left the hearing and the hearing continued with the landlord and AB.

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Substitute Service Order; other issues; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover double the security deposit, for an Order to cancel a Notice to End Tenancy for cause; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing the landlord withdrew her application for a Substitute Service Order. The tenant withdrew her application to cancel the Notice to End Tenancy and for an Order for the landlord to comply with the *Act*.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order to recover unpaid rent or utilities?

Is the landlord permitted to keep all or part of the security deposit?

Is the tenant entitled to a Monetary Order to recover double the security deposit?

Background and Evidence

The parties agreed that this tenant rented a room in this unit with access to the common areas on October 12, 2013 for a monthly rent of \$495.00 which was due on the 1st day of each month plus one third of utilities. The tenant paid a security deposit of \$250.00 on October 07, 2013. The tenancy ended on March 01, 2014.

The tenant's application

The tenant testified that the landlord was sent their forwarding address in writing on March 03, 2014. The landlord did not file a claim to keep the security deposit until March 28, 2014. The tenant therefore seeks to recover double the security deposit as it was not returned within the 15 days time frame. The tenant also seeks to recover the filing fee of \$50.00.

The landlord's application

The landlord testified that the two female tenants sent a text message to the landlord on February 21, 2014 stating that they were both going to be vacating their rooms on February 28, 2014. The landlord informed the tenants that they were required to provide one month notice but said if the landlord could re-rent their rooms on March 01, 2014 the security deposit would be returned. The landlord testified that due to the late notice from the tenants the landlord attempted to re-rent the room by placing adverts on the internet sites but failed to rent the room through the month of March. The landlord therefore seeks to recover a loss of rent from this tenant of \$495.00.

The landlord testified that the tenant owes their one third share of the hydro bill. This bill was sent to the tenant with the landlord's evidence package. The landlord has provided a copy of the hydro bill in documentary evidence which shows the total bill amount for the period between November 26, 2013 and January 29, 2014 was \$165.74. The landlord seeks to recover one third of this from the tenant to an amount of \$55.24. The landlord testified that a second bill is also due; however; the landlord did not have a copy of that bill at the time of filing this application.

The landlord seeks an Order to keep the security deposit of \$250.00 to offset against the outstanding utilities and loss of rent and a Monetary Order for the balance due. The landlord also seeks to recover the \$50.00 filing fee paid for this application.

The tenant disputed the landlord's claim. The tenant testified that they had every intention of paying the hydro bill; however, the landlord did not provide a copy of this prior to the tenant vacating the unit and the bill was only received in the landlord's evidence package. The tenant testified that the landlord should not now be entitled to recover the amount of \$55.24 as it has taken the landlord so long to provide the bill.

The tenant disputed that she is responsible for a loss of rent for March. The tenant agreed that they did give the landlord short notice to vacate the unit but testified that they had extenuating circumstances. The tenant testified that the third tenant residing in

the unit passed away suddenly and this was a traumatic experience for the remaining tenants. The landlord extenuated this stressful time by re-renting that tenant's room out a week later to a middle aged man. The tenant found it difficult to live in the unit and needed to secure a new place to live so sent the landlord a text message on February 21, 2014 giving notice to end the tenancy on February 28, 2014. The tenant testified that this text was followed up with a written notice that was dated in error for January 28, 2014 when in fact it should have been dated February 28, 2014. The tenant provided a forwarding address in that letter which was posted on March 03, 2014 and requested that the landlord return the tenant's security deposit to that address.

The landlord testified that the person who moved into the deceased tenant's room was someone the landlord knew who was going to repair that room and replace the door. This door was damaged when the police had to gain entry after concerns were raised about the tenant residing in that room. That new person was only there to make repairs and was not a replacement tenant for that room.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim to recover double the security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing. As this was sent by mail on March 03, 2014 it was deemed to have been received five days later on March 08, 2014 pursuant to s.

90(a) of the *Act*. As a result, the landlord had until March 23, 2014 to return the tenant's security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and did not file an application for Dispute Resolution to keep the deposit until March 28, 2014. Therefore, I find that the tenant has established a claim for the security deposit to be doubled pursuant to section 38(6)(b) of the *Act*.

With regard to the landlord's claim to keep the security deposit for a loss of rent and utilities; I refer the parties to s. 45(1) of the *Act* which states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

While I sympathise with the tenant's trauma in dealing with the death of the third tenant, there is no provision under the *Act* for compassionate grounds in ending a tenancy. Tenants are still required to provide a landlord with proper notice to end the tenancy which in this case the tenant did not do and insufficient notice was given by the tenant. I am satisfied that the landlord attempted to re-rent the room by advertising it for March 01, 2014 but due to the short notice the room was not re-rented for March. Consequently I find the landlord is entitled to recover a loss of rent for March of \$495.00.

With regard to the landlord's claim for the tenants share of unpaid utilities of \$55.24; the tenant argues that due to the length of time involved the tenant should not have to pay their share of this utility bill; however, I find the landlord is entitled to recover this amount

from the tenant as it was for hydro used during the tenancy and a copy of the bill was provided to the tenant in the landlords documentary evidence.

I find the landlord has therefore established a claim to keep the tenant's security deposit of \$250.00. As this amount has been doubled I also find that the doubled portion of \$250.00 will also be offset against the landlord's monetary claim.

I find as the landlord has been successful with her claim that the landlord is entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the landlord for the following amount:

Loss of rent for March, 2014	\$495.00
Unpaid utility	\$55.24
Filing fee	\$50.00
Total award for the landlord	\$600.24
Less double the security deposit	(-\$500.00)
Total amount due to the landlord	\$100.24

Conclusion

The tenant's application was successful in part. The security deposit was doubled and the entire amount of \$500.00 was offset against the landlord's monetary claim.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$100.24**. The Order must be served on the tenant AB. Should the tenant AB fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

The landlord is at liberty to re-file a new application against the other tenant (TT) named on this application.

The other tenant (TT) named on this application is at liberty to re-file a claim against the landlord.

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 18, 2014

Residential Tenancy Branch

