



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNDC, MNSD, FF

For the landlord – MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness 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 relevant evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2013 and ended on February 28, 2014. Rent for this unit was \$785.00 per month. Rent was due on the 1st day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy. The tenant gave a forwarding address in writing on February 28, 2014. Both parties attended a move in and a move out condition inspection of the unit at the start and end of the tenancy.

The tenant's application

The tenant testified that when the landlord advertised the unit the advert stated that the rent would be \$785.00 per month and did not mention that utilities would also have to be paid. The tenant signed a tenancy agreement which did not state that a percentage of utilities must be paid. The tenant testified that later the landlord put utility bills under the tenant's door and as it was the winter months the tenant paid 40 percent of each bill to avoid being evicted through the winter. The tenant seeks to recover the amounts paid for Hydro of \$72.59 and for Fortis gas of \$151.38. The tenant testified that the landlord also gave the tenant a City water and sewage bill but as this should be the landlord's responsibility to pay the tenant refused to pay this bill.

The tenant testified that although the tenancy ended on February 28, 2014 the tenant actually vacated the unit on January 31, 2014 and just had some boxes left at the unit. The tenant testified that the landlord deducted the amount of \$125.39 from the tenant's security deposit and returned the balance of \$274.61 to the tenant. The tenant testified that she did not give the landlord permission to keep all or part of the security deposit and the tenant therefore seeks to have the withheld portion of the security deposit returned.

The tenant testified that the landlord requested that the tenant have the carpets cleaned with a truck extractor. The tenant paid the amount of \$89.00 for this cleaning. The tenant testified that the landlord did not proof that the landlord had had the carpets professional cleaned at the start

of the tenancy and the tenant seeks to recover the amount paid by the tenant at the end of the tenancy.

The landlord disputed the tenant's claim. The landlord testified that they had a verbal agreement when the tenant signed the tenancy agreement that utilities were not included in the rent and the tenant would be responsible for 40 percent of the utility bills when they came in. The landlord testified that the tenant agreed to this as shown on two of the tenants email correspondence provided in evidence. The landlord explains that the tenant's unit is 900 square feet and the landlord is living in the upper unit and has 1200 square feet so the 40/60 percent split of utilities was fair. The landlord testified that the tenant always paid her share of each utility bill without any issues and only objected when the landlord presented the City water and sewage bill. Then the tenant stated that she had only agreed to pay her own utilities and not the City bill.

The landlord testified that the amount of \$125.39 was deducted from the tenant's security deposit and the balance of \$274.61 was returned to the tenant on March 05, 2014. The landlord testified that she had spoken to an Officer at the RTB office and was not told she had to apply to keep the security deposit within 15 days of receiving the tenant's forwarding address.

The landlord's application

The landlord testified that the tenant signed a one year lease agreement which was not due to expire until October 01, 2014. The tenant did provided a clear month's written notice to end the tenancy on January 27, 2014 effective on February 28, 2014. However; as the unit could not be re-rented until March 20, 2014 the landlord seeks to recover a loss of rent from March 01, 2014 to March 20, 2014 of \$493.74.

The landlord testified that the tenant failed to pay the final utilities of \$136.93 for water and sewage, \$87.25 for Fortis Gas and \$38.62 for Hydro. The landlord has provided copies of these bills in documentary evidence.

The landlord testified that the unit was left reasonably clean by the tenant; however, there was some additional cleaning required to the stove and oven, the fridge and the kitchen floor which had some kind of red stains on it. The landlord engaged a cleaner who spent three hours

cleaning the unit at \$25.00 per hour. The landlord therefore seeks to recover \$75.00. A copy of the cleaning receipt has been provided in evidence.

The landlord testified that because the tenant breached the lease agreement by ending the tenancy before the term expired the landlord suffered a loss for the cost to advertise the unit in the paper and on internet sites. The landlord seeks to recover a total amount of \$203.38 and has provided invoices and credit card statements showing the actual amounts paid.

The landlord testified that the lease agreement stipulated that the tenant could keep a dog with a fee of \$25.00 per month extra. The tenant had informed the landlord that her dog would only visit occasionally but was at the unit for at least 50 percent of the time. The landlord testified that the tenant and landlord shared the yard and the landlord had to pick up the tenant's dog's feces at least once a week. The landlord testified that as the tenant's dog was only there for 50 percent of the tenancy the landlord seeks to recover the amount of \$62.50 for dog fees.

The landlord seeks to recover an NSF fee of \$5.00 for one of the tenant's cheques that did not clear at the bank. The landlord agreed that there is not a clause in the tenancy agreement stating that NSF fees will be charged.

The landlord seeks an Order to keep the security deposit of \$125.39 and seeks a Monetary Order for the balance of her claim.

The tenant disputed the landlord's claim. The tenant refers to the tenancy agreement and testified that it does state that it is a fixed term tenancy for one year but also states that the tenant can end the tenancy by giving the landlord one clear months written Notice. The tenant testified that she relied on this clause and provided the landlord with the written Notice on January 27, 2014. The tenant therefore disputed the landlord's claim for a loss of rent for 20 days in March, 2014

The tenant testified that there is not a term in the tenancy agreement that states that utilities of 40 percent must be paid by the tenant. The tenant testified that she only agreed to pay these after the landlord put them under her door and the landlord should be responsible for all City

water bills. The tenant testified that as she did not live in the unit through February then the tenant should not be responsible for any utilities after January 31, 2014.

The tenant testified that the unit was left clean; the tenant's witness took pictures of these areas. The tenant calls her witness into the hearing. The witness testified that she saw the stove, oven and fridge at the end of the tenancy and they were all in mint condition. The witness testified that she did not see any staining on the floor.

The landlord asks the witness to describe the fridge. The witness testified that the fridge was in mint condition and the landlord had commented at the time the witness was at the unit that the landlord should have known how clean the tenant would have left the unit as the tenant is a clean person.

The tenant disputed the landlord's claim for advertising costs. The tenant testified that she is not responsible for these costs as the tenant gave the landlord more than a month's notice to find new tenants.

The tenant disputed the landlord's claim for pet fees. The tenant testified that the dog lived with the tenant's ex-boyfriend full time and was only at the tenant's unit for two days during the entire tenancy. The dog feces would have been from the landlord's dog as the tenant's dog did not use the yard and only went when he was being walked.

The tenant testified that there were no NSF fees incurred by the landlord. The landlord did tell the tenant about one cheque not having enough funds to be presented and so the tenant transferred money into that account to avoid NSF fees.

The tenant refers to the move out condition inspection reports. The tenant testified that her copy provided in evidence is the report she signed at the end of the tenancy and the landlord's report provided in her documentary evidence has had things added to it after the tenant signed it and therefore the landlord's additional comments about cleaning were not agreed to by the tenant.

The landlord testified that these cleaning comments were added after the tenant signed the report because the landlord did not notice them at the time of the inspection.

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 utilities paid to the landlord of \$223.97. I have reviewed the evidence before me and find the tenant has agreed to pay utilities to the landlord and has indeed paid 40 percent of the hydro and gas utilities each time a bill was presented. Consequently I am satisfied that there was an agreement between the parties to share the utility bills on a 40/60 split and therefore the tenant's claim to recover the amount paid to the landlord of \$223.97 is dismissed.

With regard to the tenant's claim to recover the balance of the security deposit which was withheld by the landlord; I refer the parties to s. 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants 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 on February 28, 2014. As a result, the landlord had until March 15, 2014 to return all of the tenant's security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return all the security deposit and had not filed an application for Dispute Resolution to keep part of the deposit until July 23, 2014. Therefore, even though the tenant has not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit of \$800.00 to the tenant less the amount already returned of \$125.39. The tenant is entitled to a Monetary Order pursuant to s. 38(6)(b) of the *Act* for the amount of **\$674.61**.

With regard to the tenant's claim to recover the costs incurred for carpet cleaning; the tenant has the burden of proof in this matter to show that the carpets were not clean at the start of the tenancy. The move in condition inspection report indicates that the carpets were clean at the

start of the tenancy and the tenant has signed this report to agree with the condition of the unit as recorded on the report. While a tenant is not normally required to steam clean carpets at the end of a tenancy of less than a year if the tenant has had a pet in the unit that is not caged then the tenant is required to steam clean or shampoo the carpets. As such I find the tenant did have her dog in the unit even if for a short period and therefore is responsible to have the carpets steam cleaned or shampooed. The tenant's claim to recover this cost is therefore dismissed. With regard to the landlord's application for unpaid rent; I have reviewed the tenancy agreement provided in documentary evidence and find there are two terms in this agreement that appear to contradict each other. The first term is that 'this will be a (length) one year tenancy which will begin on October 01, 2013'. The second term states that 'you may end the tenancy by giving us at least (1) one full calendar month's written notice on or before the first day of the month. As part of the rental agreement with [the landlords name inserted here], it is agreed and understood that the security deposit may be used to compensate for any loss of rental income if 30 days notice to vacate is not given in writing.'

In normal circumstances a fixed term tenancy cannot be ended until the end of the fixed term; however, this additional clause is worded in such a way that indicates that the tenant may end the tenancy as long as one full calendar month's notice is given. When the person writing the tenancy agreement provides the terms of the agreement in a contradictory manner and the other party relies on that clause then the clause should be interpreted against the interests of the person who inserted the clause, which in this case was the landlord. It is my decision that the tenant acted in good faith in the interpretation of the tenancy agreement and was therefore entitled to end the tenancy with a full months written notice. Consequently, the landlord's claim to recover a loss of rent for March is dismissed.

With regard to the landlord's claim for utilities; the landlord argued that the tenant had verbal agreed to pay 40 percent of all utilities. The documentary evidence supports the landlord's claim that the tenant did agree and the tenant actually paid some utilities without complaint. As there is nothing contained in the tenancy agreement concerning which utilities must be paid and as the tenant had access to water and sewage I find the City water bill is also included under the term of utilities that the parties verbally agreed to share. I must therefore conclude that the tenant agreed to pay for all utilities and then reneged on this agreement concerning the water

and sewage bill. Consequently, it is my decision that the landlord is entitled to recover **\$136.93** for the tenants 40 percent share of the City utility bill.

The tenant disputed that she should be held responsible for utilities for February, 2014 as she no longer resided in the unit in February. The tenant did however agree that she was still in possession of the unit until February 28, 2014 as some belongings were still in the unit. I am satisfied from the evidence before me that the tenant is still liable to pay for any utilities while the tenant remained in possession of the unit regardless of whether or not she was there full time, the landlord would still have had heat and power going to the unit should the tenant decide to return to stay there for the month of February. It is therefore my decision that the landlord is entitled to recover the amount of **\$87.25** for gas for January and February and **\$38.62** for Hydro for the same period.

With regard to the landlord's claim for \$75.00 for additional cleaning; under the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for advertisement costs of \$203.37; as I have found that the tenant was entitled to end the tenancy with one clear months notice then the landlord is not entitled to uphold the contradictory term of the fixed term tenancy. As such the landlord is responsible to pay for any costs incurred to re-rent the unit including advertisement costs. This section of the landlord's claim is therefore dismissed.

With regard to the landlord's claim for a pet fee of \$62.50, in this matter the landlord has the burden of proof to show that the tenant's dog was at the unit for at least 50 percent of the time. When one person's testimony contradicts that of the other then the person making the claim must provide corroborating evidence to meet the burden of proof. In the absence of any corroborating evidence it becomes one person's word against that of the other and the burden of proof is not met. Consequently, the landlord's claim to recover \$62.50 is dismissed.

With regard to the landlord's claim for a \$5.00 NSF fee; a landlord may charge a fee for NSF fees where the tenancy agreement provides for that fee in accordance with s. 7(2) of the Residential Tenancy Regulations. I have reviewed the tenancy agreement provided in evidence by the landlord and find the tenancy agreement does not provide for a fee of this nature to be charged. Consequently, I find the landlord's claim of \$5.00 is dismissed.

As both parties have been partially successful with their claims I find each party must bear the cost of filing their own applications. A Monetary Order has been issued to the tenant for the following amount:

Double the security deposit less amount returned	\$674.31
Less the unpaid utilities for the landlord	(-\$262.80)
Total amount due to the tenant	\$411.51

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to \$262.80. This amount has been deducted from the tenant's monetary award.

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$411.51. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court 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: August 13, 2014

Residential Tenancy Branch

