



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNSD, FF
MNDC, MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / retention of the security and / or pet damage deposit(s) / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / repayment of the security and / or pet damage deposit(s) / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy began on April 01, 2010. Monthly rent of \$500.00 was due and payable in advance on the first day of each month. The parties agree that a security deposit of \$250.00 was collected, and the tenancy agreement documents that it was due on April 06, 2010. The tenancy agreement also documents that a pet damage deposit of \$100.00 was due on April 07, 2010, however, while the landlord testified that it was never paid, the tenant testified that it was. A move-in condition inspection report was completed with the participation of both parties.

The landlord issued a 10 day notice to end tenancy for unpaid rent dated March 11, 2014. The notice was served by way of posting on the unit door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 21, 2014. The notice documents unpaid rent in the total amount of \$1,000.00 for February & March 2014 (\$500.00 x 2).

By letter to the landlord dated March 13, 2014, the tenant gave notice of her intent to vacate the unit, principally on the basis of “the ongoing issue of the unrepaired oil furnace.” In her letter the tenant provided a mailing address for the purposes of repayment of the “damage deposit.” Thereafter, the tenant made no payment of rent for either February or March 2014. A move-out condition inspection report was completed with the participation of both parties on March 25, 2014, however, the tenant declined to sign the report.

The end of tenancy and the respective applications for dispute resolution are mainly the result of problems related to functioning of the furnace, the eventual hook-up of an above ground oil tank in favour of the below ground tank that was in use at the time when tenancy began, and use of electric heaters by the tenant. Problems with the furnace surfaced on or about January 08, 2014 and the tenant maintains that problems were never completely remedied for the duration of her tenancy.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute, and undertook to achieve at least a partial resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act speaks to the Opportunity to settle dispute, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a partial resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the landlord will reimburse the tenant for cost incurred for replacing a hot water element in the amount of **\$152.89**;
- that the landlord will undertake to drain all oil from the above ground oil tank and deliver the tank back to the tenant’s former spouse by not later than **midnight, Sunday, September 14, 2014**;
- that the aspect of the settlement set out immediately above, serves to resolve the tenant’s related application for compensation of \$1,200.00.

Based on the documentary evidence and testimony, the various remaining aspects of the respective claims and my findings around each are set out below.

LANDLORD

\$1,000.00: *unpaid rent for February & March 2014 (\$500.00 + \$500.00)*

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, in part as follows:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant does not dispute that rent was not paid for either February or March 2014. I find there has been no order issued by an Arbitrator which authorized the tenant to deduct or withhold payment of any portion of rent for either month. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

\$2,540.00: *furnace oil*

I find there is no conclusive evidence related to the amount of oil in the below ground oil tank at the start of tenancy, compared to the amount of oil remaining in that same tank when tenancy ended. Accordingly, this aspect of the application is hereby dismissed.

\$50.00: *filing fee*

As the landlord has achieved a limited measure of success with her application, I find that she has established entitlement limited to recovery of **\$25.00**, or half the filing fee.

Sub-total Entitlement: \$1,025.00 (\$1,000.00 + \$25.00)

Security / pet damage deposits

In the absence of any amendments shown on the original written tenancy agreement, I find that the agreement accurately reflects that a security deposit of \$250.00 and a pet damage deposit of \$100.00 were both collected. Reducing the landlord's sub-total entitlement by the combined amount of the security and pet damage deposits still held

in trust by the landlord in the total amount of **\$350.00** (\$250.00 + \$100.00), I find that the landlord has established a net total entitlement of **\$675.00** (\$1,025.00 - \$350.00).

Net Total Entitlement: \$675.00

TENANT

\$600.00: *hydro utilities*

The tenancy agreement provides that rent does not include utilities, and the landlord argues that the tenant failed to keep her informed of what the tenant claims were recurring problems with the furnace. My findings related to this aspect of the tenant's application are subsumed under my findings set out immediately below.

\$6,000.00: *"aggravated damages"* and \$1,000.00: *"breach of right to quiet enjoyment"*

I find that the tenant has established entitlement to "nominal damages" in the limited amount of **\$750.00**, which is calculated on the basis of an average of \$250.00 per month for each of the 3 months of January, February and March 2014 (3 x \$250.00). I find that these months broadly reflect the period of time during which miscellaneous problems and disturbances occurred in relation to operation of the oil furnace.

\$1,200.00: *reimbursement for the value of the above ground oil tank supplied by tenant*

This aspect of the tenant's application was resolved between the parties, as set out above under RECORD OF SETTLEMENT.

\$152.89: *replacement of hot water element*

This aspect of the tenant's application was resolved between the parties, as set out above under RECORD OF SETTLEMENT.

\$150.00: *replacement of washer / dryer*

I find on a balance of probabilities that the tenant replaced the washer and dryer, however, in the absence of a receipt in support of the purchase price claimed, I find that the tenant has established entitlement limited to **\$100.00**.

\$100.00: *filing fee*

As the tenant has achieved a limited measure of success with her application, I find that she has established entitlement limited to recovery of **\$50.00**, or half the filing fee.

Entitlement: \$1,052.89 (\$750.00 + \$152.89 + \$100.00 + \$50.00)

Offsetting the respective entitlements, I find that the tenant has established a net entitlement of **\$377.89** (\$1,052.89 - \$675.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$377.89**. This order may be served on the landlord, filed in the Small Claims Court and enforced 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 08, 2014

Residential Tenancy Branch

