



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord applied on June 19, 2014 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on June 24, 2014 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on June 1, 2013 and ended on May 31, 2014. Rent of \$1,550.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$775.00 as a security deposit. The tenancy agreement provides that hydro is included with the rent and an addendum provides that the Tenant is responsible for hydro bills in excess of \$25.00 per month. The addendum further provides for a daily late rent fee of \$25.00 until rent is paid. There is no provision in the tenancy agreement for NSF fees. The Tenant provided its forwarding address to the Landlord by letter dated June 17, 2014.

The Landlord states that the hydro bills exceeded the \$25.00 limit by \$232.27 and the Landlord claims this amount as unpaid by the Tenant. The Tenant does not dispute this claim.

The Landlord states that the Tenant failed to leave the unit reasonably clean. No move-out inspection was offered or conducted by the Landlord. No photos of the unit or condition inspection reports were provided. The Landlord states that the Landlord's employees spent 5 hours cleaning the unit at a cost of \$25.00 per hour and claims \$125.00. The Tenant states that the unit was left completely cleaned and that the Tenant requested a move-out inspection but the Landlord did not respond.

The Landlord states that the Tenant's cheque was returned NSF and claims \$75.00.

The Landlord states that the Tenant paid rent late and claims \$175.00.

The Landlord withdraws the claim for strata fines.

Analysis

Section 7 of the Residential Tenancy Regulations provides that a landlord may charge an NSF fee or a late rent payment fee of no more than \$25.00 where such provision is contained in the tenancy agreement. Section 6 of the Act provides that a term of a

tenancy agreement is not enforceable if the term is inconsistent with the Act or the Regulations. As the tenancy agreement does not provide for any NSF fee, I dismiss this claim. As the tenancy agreement provides for a late fee in an amount greater than allowed under the Regulations, I find that this term is not enforceable and I dismiss the claim for late rent fees.

Section 21 of the Regulation provides that a duly completed condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Given the lack of an inspection report and photos and considering the Tenant's evidence of cleanliness and communication with the Landlord about a move-out inspection, I find that the Landlord has not established on a balance of probabilities that the Tenant left the unit unclean. I dismiss the claim for cleaning costs.

As the Tenant has not disputed the claim for unpaid utilities, I find that the Landlord has established an entitlement to **\$232.27**. As the Landlord's application has met with no success except for the undisputed claim, I decline to award recovery of the filing fee.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's application was made within fifteen days of the Tenant providing its forwarding address and as this date was later than the move out date, I find that the Landlord is not required to return double the security deposit. The Tenant is entitled to return of the security deposit of **\$775.00** plus zero interest less the Landlord's entitlement of **\$232.27** for a remaining amount of **\$542.73**. As the Tenant's claim for return of the security deposit has merit I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$592.73**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$592.73**. If necessary, this order may be 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: October 22, 2014

Residential Tenancy Branch

