



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent and utilities;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an Application by the tenant for orders as follows:

- e) A monetary order for costs related to the hearing, compensation for time off work to be home for repairs and a refund of rent for loss of peaceful enjoyment.

SERVICE

Both parties attended the hearing. The landlord gave sworn evidence that the Notice to End Tenancy dated December 2, 2014 and the Application for Dispute Resolution were served personally and that they received the tenant's Application and evidence late. The tenant pointed out that the documents were served by registered mail on the day of filing and were available for pickup from December 5, 2014 but the landlord did not pick them up until today.

This was verified as correct online. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent and utilities are owed and they are entitled to a monetary order for rental and utility arrears and to recover the filing fee for this application? The landlord no longer requires an Order of Possession as the tenants vacated on December 21, 2014.

Has the tenant proved on the balance of probabilities that the landlord through act or neglect caused them to lose the peaceful enjoyment of their unit contrary to section 29 of the Act and if so, to how much compensation or rent refund have they proven entitlement? Has the tenant proved on the balance of probabilities that they should be compensated for their time off work and for costs related to the Application for Dispute?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on August 3, 2014 on

a fixed term lease to expire August 1, 2015, that rent is \$995 a month plus utilities and \$995 deposit was paid (\$500 on July 14 and \$495 on August 8, 2014). The tenant states that they understood that this was the last month's rent in advance and when they asked the landlord to apply this to December's rent and vacated on December 21, 2014.

The landlord requests a monetary order as follows:

1. Half of one month's rent for December: \$495 as he states that \$500 of the deposit was for the security deposit and not all for rent.
2. \$995: for breach of contract for breaking the fixed term lease; he has not been able to re-rent yet for it is a bad time of year.
3. \$280: for utilities for August to October (\$210) and December (\$70).

The tenant contends the deposit was for the last month's rent paid in advance and that the landlord had told them not to worry about the utilities for the first two months so they contend they do not owe them for those months. They thought it was agreed that since the dryer broke and took some time to be replaced, the landlord had also decided not to charge for those initial months. The landlord said the dryer broke so he assumed they did not pay because of that but when he demanded receipts so he could get reimbursement from the supplier, they never provided any receipts for laundry so they still owe him for those months of utilities. Then in September, the tenant said there were adjustments/negotiations by emails and it was decided that the bill should be \$140 monthly as there were 3 of them, her son, her partner and her. She said the payments were made on the 15th of the following month for the previous month; she provided receipts showing she made payments October 15 for September, November 15 (for October) and December (for November) and said she intended to pay \$140 on January 15, 2015 for the retroactive payment for December. The landlord said payment on the 15th was agreed for the convenience of the tenants' budgeting but it is for the previous month in each case.

The tenants also contend that the landlord promised them in an email that they could leave anytime without penalty (October 9 email: you can quit anytime) but the landlord states he got no response to this email and never got a response even to a suggested meeting so he assumed they had no concerns. The tenants state they arranged another rental based on his promise as their relationship had deteriorated so badly and they were under stress.

The tenants claim \$3,101.90 compensation from the landlord as follows:

1. \$4.50: E transfers of money for rent payments when he did not want cash
2. \$40 Staples: Copies for hearing
3. \$2455.40 refund of rent: that is half of each month's rent from August 2014 (\$930/2) and September to December (each \$995/2).
4. \$360: Partner's time off work to be home for dryer repair, to attend the tenancy branch and for today's hearing
5. \$192: Tenant time off work for hearing

The tenants state that the refund of rent is claimed for their lack of peaceful enjoyment due to harassment of the landlord. They said they received over 100 emails, many in evidence, there was false advertising of a fireplace and the landlord locked the unit in their suite so they could not use it, the too frequent entries into their home for inspections, repairs etc. and yelling at their son. They listed work done by the landlord as installing a self closing device on their son's bedroom door, fixing the molding, putting in a battery operated light, putting a lock on the hot water tank and putting saran wrap over a heating vent in the kitchen. They said he took photographs of their rooms and they were cold after the vent being wrapped (they said the landlord thought it was an intake vent but it wasn't) and they suffered immense stress and fought with each other over his constant intrusions. They did not feel it was their home and felt unsafe. They pointed to threatening emails of the landlord where they said he was threatening them with "the law".

The landlord denies harassment, said the lease specifically excludes the fireplace and they read it before signing. He noted that most of the emails dealt with either section 29 legal Notices to Enter for repairs or addressed their complaints regarding moisture and mould, getting a humidifier or using sensors to detect sources of moisture. In the last one and a half months, he said they denied entry and said repairs were not needed so he did not enter at all. He said the tenants did make noises that bothered them and they pointed this out, they did not yell at the son but pointed out by email that it was dangerous to skateboard on the driveway as it was on a blind corner.

In evidence is the Notice to End Tenancy for unpaid rent, the tenancy agreement, many emails between the parties, photographs, a USB and receipts. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord's evidence regarding the deposit contradicts the lease terms and the tenant's evidence. I find the tenant's evidence that the deposit of \$995 was for the last month's rent agrees with lease term 1.04. As the tenant weight of the evidence is that the tenant paid all rent owing until December and gave the landlord permission to apply the \$995 to the December rent, I find the tenant's do not owe rent for December 2014.

I find the weight of the evidence is that the landlord promised in writing that the tenants could leave at any time with no penalty although they had a fixed term lease. I find they relied on this promise and rented another home. Therefore, I find the tenants do not owe \$995 for January rent for breach of the lease.

In respect to utilities, I find the tenants paid \$140 as agreed for each of September, October, and November as provided in receipts in evidence; I find the emails support the landlord's evidence that the utilities were paid on the 15th of the following month for the tenants' convenience. The issue then is whether they owe utilities for August and December 2014. The

tenant agrees they owe \$140 for December 2014; I find it is due now as they have vacated. In respect to August, I find the weight of the evidence is that both parties thought that the tenants were entitled to not pay utilities that month because of the lack of the use of a dryer for a period of time; I find insufficient evidence to support the landlord's contention that this was based on them submitting laundry bills. I find the weight of the evidence is that the tenants do not owe the utility bill for August 2014. In conclusion, I find the tenants owe \$140 for utilities for December 2014 and the landlord is entitled to a monetary order for that amount plus his filing fee. As he has says he has not completed his inspections and estimates of damages, I give him leave to reapply if other amounts are owed to him.

On the tenant's application, the onus is on them to prove on the balance of probabilities their claims. As discussed in the hearing, I find section 72 of the Act allows the arbitrator to award only a filing fee for the Application for Dispute Resolution process. Therefore, I find them not entitled to compensation for their time off work to file and attend the hearing and for their costs of copying evidence. Although they claimed also for time off work to be at home for dryer repair, I find that section 29 of the Act allows a landlord to enter the unit if sufficient notice is given and the tenant does not have to be present. The tenants may have wanted to be present but I find they are not entitled to compensation for their choice.

In respect to their claim for \$2455.40 in rent refunds as compensation for loss of their peaceful enjoyment, I have carefully considered all the email evidence which they allege was part of the harassment. I find the emails in September related to sharing utility costs, noise problems being suffered by the landlord e.g. slamming doors and machine noise and in October to answering complaints from the tenant concerning moisture and mould. Other emails were for inspections and repairs which I find are the landlord's legal obligations under section 32 and 33 to repair and maintain and proper notice of entry was given. The tenants said the emails threatened "law" but I find the landlord's emails mentioned the law which allowed him to enter after notice. I found that English is the landlord's second language and he did not always explain things well but I would not construe any of these emails as threatening. One email in August was concerning the son skateboarding on the driveway but was worded politely and expressed safety concerns. Although the tenants may have felt loss of privacy and reasonable enjoyment, I find insufficient evidence to support the tenants' contention that the landlord through his actions or communications was harassing them or causing their loss of peaceful enjoyment. I dismiss this portion of the tenant's claim. However, although the landlord denied it, I find the weight of the evidence supports the tenant's evidence that the landlord did request them to cover a heat vent (perhaps mistaking it for an intake) cause them some loss of heat for a month. I find the landlord's evidence in the hearing regarding smoke and smells makes it more probable that he did request this covering. I find the tenants entitled to a rent rebate of \$100 for restriction of their kitchen heat for about a month.

In respect to the tenant's claim for fees for e transfers as they wanted to pay cash, I find in section 1.03 of their lease, they agreed to pay by post dated cheque (not cash). If they chose

not to pay according to the terms of their lease, I find the landlord not responsible to compensate them for their choice.

Conclusion:

I find the parties entitled to compensation as calculated below and to recover filing fees for their applications as both had some merit. I give the landlord leave to reapply for further damages within the legislated time limits. I find there is no security deposit in trust for the tenants.

Calculation of Monetary Award:

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| Utility cost for December | 140.00 |
| Filing fee | 50.00 |
| Less Tenant rent rebate allowed | -100.00 |
| Less Tenant filing fee | -50.00 |
| Total Monetary Order balance to landlord | 40.00 |

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: January 14, 2015

Residential Tenancy Branch

