



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; his three advocates; the landlord; and his agent.

On January 6, 2015, prior to the hearing, the landlord submitted a handwritten note stating that his evidence was being forwarded by mail and "please consider adjournment of hearing (to allow evidence) due to difficult circumstances for respondent". The landlord provided no additional information. At the time of the hearing the landlord's evidence had not been received by the Residential Tenancy Branch.

At the hearing on January 8, 2015 the landlord clarified his request for an adjournment. The landlord submitted that since January of 2014 he and his agent have been dealing with a family death and estate that had to go through probate and they are still dealing with aspects of the estate.

The landlord confirms that they received the tenant's Notice of Hearing documents and Application for Dispute Resolution on July 21, 2014. The landlord also described the evidence, indicating it included a three page written explanation of the landlord's reason for ending the tenancy as well as substantial evidence in regard to the condition of the rental unit at the end of the tenancy and costs involved for repairs and cleaning.

The tenant objected to an adjournment. He submitted his original Application for Dispute Resolution on July 21, 2014 and wanted to have the matters resolved.

Residential Tenancy Branch Rule of Procedure #6.4 outlines the criteria I must consider before granting an adjournment. The Rule lists the following considerations:

1. Whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;

2. Whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
3. The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
4. The possible prejudice to each party.

Based on the landlord's description of the evidence I find that the bulk of the evidence is not relevant to the matters before me in this hearing. Specifically, the evidence regarding the condition of the rental unit and costs involved in cleaning and repairs is not relevant to the tenant's claim for return of the deposit.

The tenant's claim deals with whether or not the landlord complied with the requirements under Section 38 of the *Residential Tenancy Act (Act)* regarding the disbursement of the security deposit at the end of the tenancy. If the hearing was dealing with the landlord's claim to retain the deposit the evidence may have been relevant.

In regard to the written explanation of why the landlord ended the tenancy, I found the landlord could provide verbal testimony in place of the written submission.

As such, I found that an adjournment would not contribute to the resolution of the matters in the tenant's Application and I denied the landlord's request for adjournment.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for an overpayment of utilities; for moving costs and for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on June 11, 2012 for a month to month tenancy beginning on September 1, 2010 with a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid. The agreement indicates that heat is not included in the tenancy. The tenancy ended on July 4, 2014;
- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on June 3, 2014 with an effective vacancy date of July 4, 2014 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and

- A copy of a Financial and Energy Usage history for the tenants account with a gas supplier for the duration of the tenancy confirming the tenant paid out \$6,107.45 for gas supply during the tenancy.

The tenant submits that he believes that he was unjustly evicted from the rental unit when he received the 1 Month Notice to End Tenancy for Cause. He confirmed that he had not filed an Application for Dispute Resolution seeking to cancel the notice but instead moved out in accordance with the notice on or before July 4, 2014.

The tenant testified that he provided the landlord with his forwarding address, in writing, when he served the landlord with his Application for Dispute Resolution on July 21, 2014. The landlord did not dispute this statement.

The tenant submits that before his tenancy it was not made clear to him that he would be paying for gas utilities for the entire property. There are two rental units on the property. The tenant asserts that he paid for his own electricity; electricity for the shared laundry; and the gas utility for both rental units.

The landlord confirms the tenant was responsible for his own electricity and the gas utility for both units and the hot water for the laundry but that the laundry electricity was the responsibility of the tenants in the lower unit. The landlord submits that the tenant was aware from the beginning of the tenancy that he was responsible for the gas in the whole building.

The parties agree that at the start of the tenancy the gas utility was registered in the landlord's name until the tenant was able to put it in his name, approximately 1 month after the start of the tenancy. The tenant seeks compensation in the form of the recovery of **all** gas and electrical payments he made for the duration of the tenancy.

While the tenant has submitted confirmation from his service provider for the billings for gas usage he has not provided any confirmation from his electrical service provider as to any billings for any period of the tenancy.

The tenant claims \$6083.57 for gas utilities and \$3,914.00 for electrical utilities.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

As the tenant did not dispute the notice to end tenancy when he received and he moved out of the rental unit in accordance with the notice I find he cannot now assert the landlord breached the *Act* in ending the tenancy. As such, I dismiss the tenant's claim for compensation for moving costs.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I find the landlord received the tenant's forwarding address on July 21, 2014 and as such was allowed until August 5, 2014 to either return the tenant's security deposit or file an Application for Dispute Resolution. As the landlord had not, by the date of this hearing, filed an Application to claim against the deposit, I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of security deposit pursuant to Section 38(6).

Section 6(3) of the *Act* stipulates that a term in a tenancy agreement is not enforceable if the term is inconsistent with the *Act* or regulations; the term is unconscionable; or the term is not expressed in a manner that clearly communicates the rights and obligations under it. Section 3 of the Residential Tenancy Regulation states that a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Despite the landlord's position that the tenant was aware of the requirement to pay the gas utility for both rental units prior to the start of the tenancy, I find the requirement of the tenant to pay for heat for another rental unit is grossly unfair to the tenant and is therefore an unconscionable term. Therefore, I find the tenant is entitled to compensation.

As to the quantum, I find that despite the tenant's claim the requirement for the payment of hydro for his portion of the rental unit is not unreasonable and it is not impacted by the requirement for him to pay gas utilities. Further, I find that the tenant has failed to

provide sufficient evidence to establish he had any responsibility for electrical costs for the laundry room.

Finally, I find that it would be unfair and unreasonable for the landlord to pay for all of the gas utility during the tenancy when the tenancy agreement clearly shows that heat was not included in the tenancy. I dismiss the portion of the tenant's claim for recovery of any electrical costs.

I also note that while the tenant's claim for gas is based on his verbal clarification in the hearing of \$6,083.57 the Financial and Energy Usage document submitted confirms charges in the amount of \$6,107.45.

Based on the above, I find the tenant is entitled to recover $\frac{1}{2}$ of the amounts paid for gas utility during the course of the tenancy or \$3,053.72.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,853.72** comprised of \$800.00 for double the amount of the security deposit and \$3,053.72 for gas utility costs.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: January 09, 2015

Residential Tenancy Branch

