



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' Application (filed January 6, 2015): MND; MNR; MNDC; MNSD; FF

Tenant's Application (filed March 23, 2015): MNSD; MNDC

Introduction

This Hearing was convened to consider cross Applications. The Landlords seek a monetary award; to apply the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks compensation for damage or loss under the Act, regulation or tenancy agreement, and return of the security deposit and other deposits.

The Landlords, the Tenant and the Tenant's witness gave affirmed testimony at the Hearing.

It was established that the parties served each other with their Notice of Hearing documents and copies of their documentary evidence, by registered mail.

Preliminary Matter

At the outset of the Hearing, the Landlords' legal counsel stated that the Landlords have been reimbursed by their insurers for the cost of replacing the closet doors, and therefore the Landlords withdrew that portion of their Application.

Issues to be Decided

1. Are the Landlords entitled to a monetary award for unpaid rent from December 1 to 15, 2014?
2. Are the Landlords entitled to a monetary award for the cost of replacing and rekeying locks at the rental property?
3. Are the Landlords entitled to apply the security deposit towards their monetary award or should it be returned to the Tenant?
4. Is the Tenant entitled to compensation for an increase in her hydro bill?
5. Is the Tenant entitled to compensation as a result of a flood in the rental unit?

6. Is the Tenant entitled to recover additional fees paid to the Landlord for a pool key and bike locker key?

Background and Evidence

Both parties referred to previous hearings with respect to this tenancy. I have provided the file numbers for those applications ("Previous Applications") on the cover sheet of this Decision.

This tenancy began on October 12, 2013, and ended by mutual agreement on December 15, 2014. Monthly rent was \$1,300.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$650.00 at the beginning of the tenancy.

The following is a brief outline of the Previous Applications and findings/orders made:

Date of Hearing	Nature of Application	Findings/orders made
Sept 2, 2014	Cross-application: Tenant applied to cancel a Notice to End Tenancy and for compensation. Landlord applied for Order of Possession and monetary award.	Both applications were dismissed with leave to reapply.
Sept 24, 2014	Landlord's Application for Review Consideration	Review Application Granted. New Hearing ordered.
Nov 13, 2014	New Hearing on cross-applications plus another application from Tenant for an additional amount of compensation and return of the security deposit.	Nov 14, 2015: <ul style="list-style-type: none"> • Mutually settled agreement that the tenancy ends Dec. 15, 2014 at 7:00 p.m. • Order of Possession granted to Landlord. • Parties agreed rent is owed up to the last day of the tenancy. • Landlord withdrew balance of its claim. Liberty to reapply within legislated time frame. • Tenant's application dated July 15, 2014, dismissed.

		<ul style="list-style-type: none"> Tenant's application dated October 6, 2014, for return of security deposit and compensation adjourned.
Dec 22, 2014 and Jan 22, 2015	Reconvened for Tenant's application for compensation and return of the security deposit.	<p>Jan 29, 2015:</p> <ul style="list-style-type: none"> Landlord "obtained possession of the rental unit on December 16, 2014, the date keys were provided by the tenant's son". Tenant provided forwarding address in writing on December 22, 2014. Tenant's October 6th application for return of security deposit premature. Security deposit will be dealt with at future hearing on Landlord's application (this Hearing). Tenant's application dismissed, with exception of a loss claimed for a period of time after the tenancy ended which is out of jurisdiction of the Act.
Mar. 24, 2015	Tenant's Application for Review Consideration.	Application dismissed. Original Decision and Orders confirmed.

The Landlords and their legal counsel gave the following testimony and submissions:

- The Landlords' counsel AC stated that the Tenant did not pay rent for the month of December, 2014. The Landlords seek a monetary award for the period between December 1 and 15, 2014, in the amount of **\$629.03**. A copy of e-mail correspondence with respect to unpaid rent was provided in evidence.
- AC submitted that the Tenant did not surrender the keys to the rental unit until December 19, 2014, making it necessary for the Landlord to re-key the rental unit on December 16, 2014. The Landlords seek to recover that cost from the Tenant in the amount of **\$116.21**. A copy of the receipt was provided in evidence.

- AC submitted that the parties agreed to perform a move-out condition inspection at 10:30 a.m., December 16, 2014, but the Tenant did not attend so the Landlord completed the Report by herself.
- AC submitted that the issues identified in the Tenant's Application were decided, or should have been decided, at the hearings on December 22, 2014 and January 29, 2015. He stated that the Tenant was barred from claiming these damages because of the principle of res judicata. He stated that the Tenant's remedy would have been to amend her Previous Application.
- AC submitted that the Tenant failed to provide sufficient evidence to prove a loss with respect to her claim for overpaying her utility bill.
- The Landlord JB stated that the Tenant is not in a position to give evidence with respect to when the keys were returned because she moved out of the rental unit before the end of the tenancy.

The Tenant and her witness gave the following testimony:

- The Tenant stated that she was advised by property managers at her new residence not to pay any rent to the Landlord for December, 2014.
- The Tenant submitted that in the Decision dated January 29, 2015, the arbitrator found that the keys were returned on December 16, 2014, and therefore the date that the keys were returned had already been decided. She submitted that the invoice provided by the Landlord is dated December 22, 2014.
- The Tenant stated that she was not given 3 keys for the building.
- The Tenant testified that she paid a deposit of **\$25.00** for a pool key and **\$10.00** for a bike rack key, which were not returned. She stated that these deposits were not recorded on the tenancy agreement, but were handwritten on an envelope. The Tenant testified that she no longer has the envelope.
- The Tenant submitted that she over paid approximately **\$10.00** for hydro, because the dehumidifiers installed after the flood were hooked up to her power source.
- The Tenant testified that on June 23, 2014, a flood occurred in the rental unit which caused the tenancy to be devalued. The Tenant submitted that the "situation would have been dealt with" at the September 2, 2014, except for an administrative error made by the Residential Tenancy Branch. She stated that she was "compelled to stay" and that she is seeking compensation from the Landlord in the amount of **\$600.00** because 30% of her floor space was unusable for three months (September 2 – December 15, 2014).
- The Tenant's witness RV is her son and also occupied the rental unit. RV testified that he returned the keys to the rental unit on December 16, 2014, after making sure that the rental unit was clean. RV denied that the Landlord had an appointment with the Tenant to do a condition inspection report. RV stated that

he had to “share the same shower” with his mother after the flood and that there was never quite enough water. He testified that the rental unit was in the worst condition at the time of the flood, but after the flood it was never the same. RV acknowledged that the Tenant left “a couple of days” before he left. RV stated that he gave the keys “to a lady at the rental place downtown” and that the strata management company gave him a receipt. He testified that his mother probably had the receipt.

Analysis

1. Are the Landlords entitled to a monetary award for unpaid rent from December 1 to 15, 2014?

Rent must be paid when it is due, whether or not the Landlord complies with the Act, regulation or tenancy agreement, unless the Tenant has a right under the Act to withhold rent (such as an Order from the Director). In this case, I find that the Tenant had no such right. Pursuant to the terms of the November 13th settlement agreement between the parties, the Landlords seek rent for only a portion of December, 2014, and I find that they are entitled to the amount claimed of **\$629.03** (\$1,300.00 / 31 days = \$41.93548 per day. \$41.93548 x 15 days = \$629.03).

2. Are the Landlords entitled to a monetary award for the cost of replacing and rekeying locks at the rental property?

The Decision of January 29, 2015, provides that the date the keys were returned was considered by the Arbitrator. On page 2 of the Decision, she writes, “The landlord obtained possession of the unit on December 16, 2014, the date keys were provided by the tenant’s son”. Neither of the parties applied for a correction to the Decision; and therefore, I find that the keys were returned on December 16, 2014. The Landlords’ application for the cost of rekeying the rental unit is dismissed.

3. Are the Landlords entitled to apply the security deposit towards their monetary award or should it be returned to the Tenant?

Pursuant to the provisions of Section 72 of the Act, I order that the Landlord deduct their monetary award from the security deposit, leaving a balance of \$20.97. Based on the Landlords’ documentary evidence provided (the e-mails with respect to the Condition Inspection appointment for 10:30, December 16, 2014), I find that the parties had agreed to that date and time and that the Tenant did not attend, or send an agent on her behalf. Therefore, pursuant to the provisions of Section 38 of the Act, I find that the

Tenant extinguished her right to claim against the security deposit and that the Landlord may keep the balance of the security deposit.

4. Is the Tenant entitled to compensation for an increase in her hydro bill?

I find that the Tenant did not provide sufficient evidence to prove this portion of her claim and it is dismissed.

5. Is the Tenant entitled to compensation as a result of a flood in the rental unit?

Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to res judicata, the Courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

I find that this portion of the Tenant's claim must be dismissed under the principles of res judicata. The Tenant's remedy would have been to amend her initial claim prior to the November hearing date, or to include this request in the second application for dispute resolution that she filed, which was also scheduled to be heard at the November Hearing date.

6. Is the Tenant entitled to recover additional fees paid to the Landlord for a pool key and bike locker key?

I find that the Tenant did not provide sufficient evidence to prove this portion of her claim and it is dismissed.

I decline to award recovery of the filing fee to the Landlords.

Conclusion

The Tenant's application is **dismissed without leave to reapply**.

The Landlords may keep the security deposit in the amount of **\$650.00** in full and final settlement of their claims against the Tenant.

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: May 14, 2015

Residential Tenancy Branch

