



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit and a cross-application by the tenant for an order for the return of double his security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the tenant entitled to the return of double his security deposit?

Background and Evidence

The parties agreed that the tenancy began in December 2013 at which time the tenant paid a \$375.00 security deposit, that rent was set at \$750.00 per month and that the tenancy ended in November 2014.

The parties have been involved in 2 previous hearings. The first hearing was held on June 17, 2014 (the "First Hearing") and in that hearing, the landlord was ordered to perform certain repairs, the tenant was permitted to reduce his rent by \$225.00 until all of the repairs were completed and the tenant was granted a monetary order for \$1,557.50. The landlord acknowledged having been served the monetary order by the tenant on or about June 30, 2014.

The second hearing was held on November 17, 2014 (the "Second Hearing") and in that hearing, the landlord was granted an order of possession. The tenant was served with the order of possession and vacated the rental unit on November 20. The parties agreed that the tenant reduced his rent by \$225.00 in both July and August, paying \$525.00 for rent in those months, and that the tenant withheld his rent for each of the months of September, October and November.

The landlord seeks to recover rent owed for September – November inclusive totaling \$2,250.00 as well as \$750.00 for lost income for December as the landlord claimed the tenant did not adequately clean the rental unit at the end of November and therefore the landlord could not re-rent the unit for December. The landlord also seeks to retain the security deposit to compensate him for the cost of cleaning the unit. The landlord provided no evidence

whatsoever to show the condition of the unit at the time the tenant vacated the rental unit, nor did he provide any evidence showing his attempts to re-rent the unit.

The landlord claimed that the rental reduction should not have continued because the tenant prevented the landlord from performing repairs. The landlord testified that he hired other occupants of the building to perform various repairs, but the tenant would not grant them access despite the landlord having given proper notice of entry. He claimed that he purchased a new refrigerator which the tenant refused to accept and also offered the tenant a used oven to replace the one in the rental unit, but the tenant refused the oven. Although the landlord was ordered to repair the heat in the First Hearing, the landlord testified that he did not intend to inspect or repair the heating system as the building had new boilers and he was convinced there was nothing wrong with the heating system.

The tenant seeks the return of double his security deposit and appears to base his claim on the fact that the landlord did not perform a condition inspection of the unit at the beginning and end of the tenancy.

Both parties seek to recover the filing fees paid to bring their respective applications.

Analysis

Section 72(2)(a) of the Act provides that when a landlord has been ordered to pay a sum to a tenant, the tenant may deduct this amount from his rent. I find that the tenant was entitled under the legislation to deduct the monetary award from his rent.

The decision flowing from the First Hearing ordered the landlord to perform repairs or cleaning to 9 issues raised by the tenant and clearly stated that the tenant could reduce his monthly rent by \$225.00 until the repairs were completed. The decision also stated that if the tenant continued to reduce his rent after he was no longer entitled to do so, the landlord was to file an application to prove to that the rent should be restored to its full amount. The landlord chose not to pursue an application with the Branch and at this hearing, testified that he had no intention of repairing the heating system despite having been ordered to do so. Regardless of whether the tenant prevented the landlord from performing some of the repairs, in the absence of proof that the heating system does not require repair, I find that the landlord has failed to prove that he completed all of the repairs required in the decision from the First Hearing and therefore find that the rent payable for September – November inclusive was \$525.00 per month. I find that the tenant has fully satisfied the rent payable for that period and I dismiss the landlord's claim for recovery of that rent.

In order to claim lost income for December, the landlord must prove that he lost income as a result of the tenant's breach of the Act and that he acted reasonably to minimize his losses.

The tenant vacated the unit pursuant to an order of possession which was obtained even though the tenant had lawfully withheld his rent for the month of November. I find that the landlord's loss was suffered as a direct result of the landlord having not satisfied the monetary

order and refusing to accept the tenant's lawful reduction of rent. While the arbitrator in the Second Hearing agreed that the landlord was entitled to end the tenancy, I find that the landlord should not benefit from his own breach of the Act. Unless the tenant has breached the Act, the landlord is not entitled to be made whole by the tenant. Further, the landlord provided no evidence to corroborate his claim that the tenant failed to leave the rental unit in reasonably clean condition and also failed to prove that he acted reasonably to minimize his losses by attempting to re-rent the unit. I therefore find that the landlord's claim must fail and I dismiss the claim in its entirety.

The tenant has applied for double his security deposit, presumably on the basis that the landlord failed to complete a condition inspection report. While sections 24(2) and 36(2) of the Act provide that a landlord's right to claim against the deposit is extinguished if the landlord fails to complete and give the tenant a copy of a condition inspection report, section 38 of the Act gives landlords 2 options with respect to the security deposit. They must either return the deposit or file a claim against it. The question of extinguishment is a legal determination to be made by an arbitrator and I find that as the landlord filed his claim within 15 days of the end of the tenancy as is required by the Act, the tenant is not entitled to double the deposit.

However, I find that the tenant is entitled to the base amount of the deposit as well as the \$50.00 filing fee paid to bring his claim and I therefore award the tenant \$425.00. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord's claim is dismissed and the tenant is awarded \$425.00.

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: June 19, 2015

Residential Tenancy Branch

