



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF
MNDC, MNSD, FF

Introduction

This hearing concerns 2 applications:

- i) by the landlord for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and
- ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

It is understood that the unit which is the subject of this dispute is 1 of what are 2 units located in the lower portion of a 2 storey house. The landlord resides in the upstairs portion of the house. A previous hearing was held on February 11, 2014, with a decision issued by date of February 19, 2014.

Pursuant to a written tenancy agreement the term of tenancy is from February 01, 2013 to February 01, 2014. Monthly rent of \$875.00 is due and payable in advance on the first day of each month, and a security deposit of \$500.00 was collected. Pursuant to the tenancy agreement, the tenant is responsible for payment of 30% of the monthly gas and hydro utilities. A move-in condition inspection report was not completed.

The tenant vacated the unit in early February 2014, however, it was not until February 14, 2014 when unit keys were returned to the landlord. A move-out condition inspection report was not completed. During the hearing the landlord acknowledged receiving the tenant's forwarding address in writing by way of registered mail in April 2014. The tenant filed her application for dispute resolution on November 19, 2014, and the landlord's application was subsequently filed on December 12, 2014.

Analysis

Based on the mainly contradictory / conflicting testimony of the parties, in addition to the considerable documentary evidence which includes, but is not limited to, lengthy narratives and an abundance of photocopied photographs, the various aspects of the respective applications and my findings are set out below.

LANDLORD

\$875.00: unpaid rent for February 2014

There is conflicting testimony around whether rent was or was not paid for any portion of February 2014. In view of the conflicting testimony, and in the absence of any documentary evidence of receipts issued during the tenancy, conclusively informative or instructive direct communications between the parties concerning unpaid rent, and / or evidence of a 10 day notice to end tenancy for unpaid rent or utilities having been issued, this aspect of the application must be dismissed.

\$238.82: (\$74.47 = 30% of gas + 164.35 = 30% of hydro) unpaid utilities January – February 2014

Relevant documentary evidence before me is limited to 2 billings, 1 for gas and 1 for hydro. However, for reasons virtually identical to those set out immediately above, this aspect of the application must be dismissed.

\$500.00: "stolen" sofa

I find that the landlord has failed to meet the burden of proving the value of the sofa, or proving that the sofa was "stolen" by the tenant. For example, there is neither an sworn affidavit before me from "SC" (another renter who is said to be the owner of the sofa), nor a copy of any police report. In the result, this aspect of the application is dismissed.

\$550.00: *repainting wall*
\$800.00: *carpet replacement*
\$700.00: *repair of laminate flooring*

The attention of the parties is drawn to the following sections of the Act and Regulation:

ACT

Section 23: **Condition inspection: start of tenancy or new pet**
Section 24: **Consequences for tenant and landlord if report requirements not met**
Section 35: **Condition inspection: end of tenancy**
Section 36: **Consequences for tenant and landlord if report requirements not met**

REGULATION

Part 3 – Condition Inspections (section 14 to 21)

In the absence of receipts in support of any of the costs claimed, and in the absence of the comparative results of move-in and move-out condition inspection reports, and in the absence of any photographs showing alleged damages, these aspects of the landlord's application are hereby dismissed.

\$12,000.00: *(\$2,000.00 + \$2,000.00 + \$5,000.00 + \$3,000.00) compensation arising from various forms of alleged breaches of the landlord's right to quiet enjoyment*

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**. Further, Residential Tenancy Policy Guideline speaks to "Right to Quiet Enjoyment," and provides in part:

.....In connection with the landlord – tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy. A landlord does not have a reciprocal right to quiet enjoyment.

Following from the above, and in the absence of anything beyond mutual allegations made by the parties, this aspect of the application is hereby dismissed.

\$1,500.00: *cost of 3 lost business days for the male landlord arising from filing of forms and documents*

\$1,500.00: *cost of 3 lost business days for the female landlord arising from filing of forms and documents*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application must be dismissed.

\$100.00: *filing fee*

As the landlord has not succeeded with the main aspects of his application, the application to recover the filing fee must also be dismissed.

Total entitlement: \$00.00

TENANT

\$1,000.00: *(2 x \$500.00) the double return of the security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section 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 either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, I find that tenancy ended in February 2014, and that the tenant informed the landlord in writing of her forwarding address in April 2014. I further find that the landlord neither repaid the security deposit, nor filed an application to retain it within 15 days after receiving forwarding address in writing in April 2014. Again, I note that it was not until December 12, 2014 when the landlord filed his application. In the result, I find that the tenant has established entitlement to the full amount claimed.

\$25.00: *reimbursement of "extorted" rent payment in October 2013*

I find that the tenant made this payment after it was requested by the landlord, who claimed that the original rent payment was short by \$25.00. I find there is no evidence that this payment was not due, and this aspect of the application is hereby dismissed.

\$41.21: (\$10.33 + \$19.43 + \$11.45) *registered mail*

\$32.53: *photocopies*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the tenant's claim is hereby dismissed.

\$1,153.50: (\$549.37 + \$33.35 + \$34.71 + \$72.79 + \$19.03 + \$39.39 + \$26.87 + 377.99) *value of miscellaneous items owned by the tenant which were allegedly disposed of and / or damaged and / or stolen by the landlords, and required replacing*

I find there is insufficient evidence to support the claim that any of the items identified were disposed of, damaged, or stolen by the landlord and therefore had to be replaced by the tenant. This aspect of the application is therefore dismissed.

\$1,286.22: (\$611.00 + \$675.22) *cost of internet and television over 13 months*

In the absence of any documentary evidence that internet and television were included in the monthly rent, this aspect of the application is hereby dismissed.

\$41.18: *"stress medicine"*

As I find there is insufficient evidence to link this claim to the tenancy, and no provision in the relevant legislation to therefore support it, this aspect of the claim is dismissed.

\$480.00: (\$160.00 + \$320.00) *cost of commercial laundry facilities and estimated value of tenant's time to make use of same*

In the absence of sufficiently conclusive documentary evidence to support this aspect of the claim, it is hereby dismissed.

\$519.00: *alleged value of utilities owed by landlord*

In the absence of sufficiently conclusive documentary evidence to support this aspect of the claim, it is hereby dismissed.

\$1,143.25: *estimated value of loss arising from allegedly restricted access to laundry, pantry and storage area*

In view of the conflicting narratives submitted in evidence, and in the absence of sufficiently conclusive evidence to support this aspect of the claim, it is dismissed.

\$600.00: *estimated loss arising from "missing work"*

I find there is insufficient and inconclusive evidence to support this aspect of the claim in direct relation to the tenancy, and it is accordingly dismissed.

\$62.98: *bike tire repair*

In the absence of sufficient evidence that the landlord was responsible for the damage and, therefore, the repair, this aspect of the application is hereby dismissed.

\$4,000.00: *(\$2,000.00 + \$2,000.00) alleged breaches of the right to quiet enjoyment*

As noted above, the Act and the Residential Tenancy Policy Guidelines variously address the right to quiet enjoyment. In part, Guideline # 6 provides:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

I find that any discomfort or inconvenience experienced by the tenant during the tenancy was of a temporary nature. Accordingly, this aspect of the application is dismissed.

\$670.43: *car repair*

There is insufficient evidence that the landlord is responsible for the damage and the cost claimed, and related allegations / claims are properly made to the Police and / or ICBC. This aspect of the application is therefore dismissed.

\$561.33: *moving costs*

\$150.00: *mover's helpers*

Mutual and increasing animosity between the parties led ultimately to the end of tenancy. I find there is no provision in the relevant legislation to support the tenant's claim for costs related to moving after tenancy ended. This aspect of the application is therefore dismissed.

\$100.00: (\$50.00 + \$50.00) *filing fees*

I note that the tenant's filing fee was waived in relation to this current application. Other filing fees that may have been paid for other applications which concern other proceedings which are not before me, must be dismissed.

Total entitlement: \$1,000.00

Conclusion

The landlord's application is dismissed in its entirety.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of **\$1,000.00**. Should it be necessary, this order may be served on the landlord, 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: July 09, 2015

Residential Tenancy Branch

