



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, RR, FF

Introduction

This hearing was originally convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit – Section 38;
3. An Order for a rent reduction - Section 65; and
4. An Order to recover the filing fee for the application - Section 72.

At the original hearing on June 15, 2015 the Tenant’s claim for return of the security deposit was dismissed with leave to reapply and the remaining claims were adjourned. During the interim the Landlord made an application and this was joined with this reconvened hearing. The Landlord claims as follows:

1. A Monetary Order for unpaid rent – Section 67;
2. An Order to retain the security deposit – Section 38; and
3. An Order to recover the filing fee for the application – Section 72.

The Landlord did not attend to pursue its application and I therefore dismiss the application. The Tenant was given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant’s application sets out a total monetary claim of \$2,169.00 and included a claim for the return of the security deposit. No monetary worksheet was provided. The

Tenant states that a worksheet was completed online and does not know why the worksheet is not in the materials filed for the hearing. The Tenant states that the total amount being claimed is approximately \$4,000.00 and includes the claim for return of double the security deposit.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that a claim is limited to what is stated in the application. As there is no amendment to the application indicating a claim for an amount greater than stated in the application I find that the Tenant's total monetary claim is restricted to \$2,169.00. As the claim for return of double the security deposit would equal \$1,400.00 from this sum and as this claim was dismissed with leave to reapply, the remaining amount being claimed under the application would be \$769.00. The Tenant's remaining claims are therefore restricted to this amount.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of a duplex containing a separate basement suite that was not part of the tenancy started on October 15, 2012 and ended on October 15, 2014. Rent of \$1,400.00 was payable monthly. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit.

The Tenant shared utility costs with the tenant in the basement suite. The Tenant paid 2/3 of the utility and the lower tenant paid 1/3 of the utility. Not included in the tenancy but situated in the back yard were the Landlord's workshop and wine shop. The Tenant did not agree to assume any cost used by the Landlord for these shops and the Tenant states that the Landlord's share of the cost worked out to approximately \$15.00 per month. The Tenant calculated this cost by speaking to the utility company and obtaining an estimate of the costs for the workshops. The Tenant claims \$360.00 for the Landlord's use of the Tenant's utilities for 24 months.

The Tenant states that during the tenancy the Landlord would be over daily to work in the shops and would access the backyard. The Tenant states that on several occasions the Landlord would dress inappropriately, i.e. with only underwear, and would use profanities. The Tenant states that her 12 year old daughter was witness to this on a few occasions. The Tenant states that on two occasions the Landlord also entered the unit without notice or permission. On one occasion the daughter was home alone when she heard the Landlord enter the unit. The daughter called the mother who spoke with the Landlord in the phone and told him to leave. The Landlord then left. On the second occasion the Tenant came home to find the Landlord in the laundry room. The Landlord claimed to have been working on some problem however the Tenant has not reported any problems. The Landlord left when asked by the Tenant. The Tenant claims \$400.00 for loss of quiet enjoyment.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the undisputed evidence of the Tenant and considering the supporting evidence I find that the Tenant has substantiated that the Landlord owes the Tenant **\$360.00** for its use of the Tenant's utilities. Based on the undisputed evidence of the Tenant I find that the Tenant has substantiated that the Landlord breached the Tenant's right to quiet enjoyment of the unit by entering the unit without right and by dressing and speaking inappropriately in view of the Tenant's child and while in the Tenant's yard. I find therefore that the Tenant is entitled to the **\$400.00** claimed.

As the Landlord's application and claim to retain the security deposit has been dismissed, I find that the Tenant is entitled to the return of the security deposit of **\$700.00** plus zero interest. As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,510.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,510.00**. If necessary, this order may be 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: August 20, 2015

Residential Tenancy Branch

