



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns the tenant's application 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 the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from October 01, 2011 to September 30, 2012. Thereafter, tenancy continued on a month-to-month basis. Monthly rent was due and payable in advance on the first day of each month. While rent was \$1,500.00 at the start of tenancy, it was later increased to \$1,600.00. A security deposit of \$750.00 was collected on September 04, 2011. A move-in condition inspection report was not completed.

By letter dated November 24, 2014, the tenant gave notice to end tenancy effective December 31, 2014. In her letter the tenant also provided the landlord with her forwarding address for the purpose of repayment of her security deposit. The tenant was travelling for most, if not all of the month of December 2014. A move-out condition inspection report was completed on December 23, 2014, with the landlord and an agent representing the tenant. The report bears the signatures of both parties as a result of the inspection, and on that occasion the tenant's agent returned the unit keys to the landlord.

It appears that the future new renter, "NB" was given access to the unit by the landlord sometime in December 2014. In anticipation of a tenancy formally beginning on January 01, 2015, "NB" began moving possessions to the unit / property, and commenced cleaning / repairs in the unit. By email to the landlord by date of December 28, 2014, "NB" advised, "Today I've replaced all the locks and tested them."

Later on December 31, 2014, a further inspection of the unit was to take place which involved the landlord and a different agent representing the tenant. However, it appears that "NB" declined to permit the parties to enter the unit in order to complete a further inspection. The

landlord testified his understanding is that the tenant effectively ended the tenancy when the unit keys were returned by her agent on December 23, 2014.

The landlord has not repaid the security deposit, claiming that costs incurred for cleaning and repairs begun after December 23, 2014, exceed the amount of the security deposit. Presently, the landlord has not filed an application for dispute resolution.

The tenant seeks reimbursement of ½ month's rent for December, in addition to the reimbursement of certain costs as a result of "NB's" access / entry to the unit, and the taking of full possession of the unit prior to the end of the fixed term.

Analysis

Based on the documentary evidence and testimony, the various aspects of the tenant's application and my findings are set out below.

\$1,500.00: *2 x \$750.00) 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 case, I find that the tenant provided her forwarding address by letter dated November 24, 2014. I also find that the landlord neither repaid the security deposit, nor filed an application to retain it within 15 days after the end of tenancy which was December 31, 2014. Accordingly, I find that the tenant has established entitlement to the double return of the security deposit as claimed.

\$9.00: *reimbursement of hydro, pro-rated for the latter half of December 2014*

I find there is insufficient evidence that "NB" gained a significant advantage from the provision of hydro to the unit during the latter half of December 2014, which is the period at issue in the application. In the result, I find that the tenant has established entitlement limited to **\$4.50**, which reflects the value of hydro for approximately 1 week from December 24 to 31, 2014. This is the period after the unit keys were returned, and before the formal end of tenancy pursuant to the tenancy agreement.

\$52.00:
reimbursement of furnace oil, pro-rated for the latter half of December 2014

I find there is insufficient evidence that "NB" gained a significant advantage from the furnace oil during the latter half of December 2014, which is the period at issue in the application. In the result, I find that the tenant has established entitlement limited to **\$26.00**, which reflects the value of oil for approximately 1 week from December 24 to 31, 2014. This is the period after the unit keys were returned, and before the formal end of tenancy pursuant to the tenancy agreement.

\$10.00: *reimbursement of gas (Fortis), pro-rated for the latter half of December 2014*

I find there is insufficient evidence that "NB" gained a significant advantage from the provision of gas to the unit during the latter half of December 2014, which is the period at issue in the application. In the result, I find that the tenant has established entitlement limited to **\$5.00**, which reflects the value of gas for approximately 1 week from December 24 to 31, 2014. This is the period after the unit keys were returned, and before the formal end of tenancy pursuant to the tenancy agreement.

\$16.00: *reimbursement of property insurance for the latter half of December 2014*

I find that the contract between the tenant and her insurance provider is a matter that is between those 2 parties, and is separate and distinct from the tenancy agreement entered into by the tenant and the landlord. Accordingly, this aspect of the application is dismissed.

\$800.00: *reimbursement of rent for the latter half of December 2014.*

The tenant paid rent in full for December 2014. There is no evidence before me which indicates that the landlord also collected rent from "NB" for any portion of December 2014. However, I find that while "NB" had access to the unit beginning sometime in December 2014, he had full possession of the unit from December 28, 2014 which is when the unit locks were changed, and "NB" began staying overnight in the unit. In the result, I find that the tenant has established entitlement to reimbursement of rent for the four (4) day period from December 28 to 31, 2014 in the amount of **\$206.44**, which is calculated as follows:

$$\text{\$1,600.00 (monthly rent)} \div 31 \text{ (\# days in December)} = \text{\$51.61 (per diem rent)}$$

$$\text{\$51.61 (per diem rent)} \times 4 \text{ (\# days of full possession)} = \text{\$206.44}$$

\$50.00: *filing fee:*

As the tenant has achieved a measure of success with the principal aspects of her application, I find that she has also established entitlement to recovery of the filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,791.94** (\$1,500.00 + \$4.50 + \$26.00 + \$5.00 + \$206.44 + \$50.00). 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: August 12, 2015

Residential Tenancy Branch

