Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABSTRACT DEVELOPMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC

Introduction

This hearing was originally scheduled to deal with a tenant's application for a Monetary Order for the cost of emergency repairs; and return of hydro paid to the landlord. The tenant subsequently filed and served an amended application to increase her monetary claim against the landlord for return of double the security deposit and compenastion for "unlawful eviction".

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matters

The landlord confirmed receiving two folders of evidence from the tenant for this proceeding; however, the landlord pointed out that it appeared as though some pages were missing as the page numbers were non-sequential in parts. The landlord and I compared the page numbers of the tenant's evidence packages and I noted that several page numbers appearing on my copy were different than the page numbers appearing on the documents before the landlord. The landlord indicated he wished to proceed with the dispute and I instructed the landlord to bring to my attention any documents to which the tenant may refer to in her submissions that he did not have or could not locate. On a number of occasions during the hearing the landlord pointed out that a particular document had a different page number than the one indicated on the evidence package before me. Also, during the hearing the landlord pointed out that one particularly relevant document was not in the evidence package before him. I have addressed this issue in making this decision.

I confirmed with the landlord that the landlord had not served any documentary evidence in response to the tenant's claims.

In filing the tenant's original application I noted that she prepared a Monetary Order Worksheet. In filing her amended application to increase the claim a further $3,800.00 the tenant did not prepare another or amend the Monetary Order Worksheet and she did not include a narrative explaining her amendment. Rather, she merely indicated the following on the amended application "request double security deposit" and "2 months extra rent due to unlawful eviction". At the outset of the hearing the tenant explained how she calculated the increased claim. The landlord confirmed that he understood the amounts included in the amended claim but indicated he was uncertain as to the reason the tenant was seeking the portion related to an "unlawful eviction". I noted that the tenant's evidence included a police report with respect to events that took place on the last day of tenancy and the tenant stated that the police report was unrelated to her allegation of "unlawful eviction". Rather, the tenant explained that she was seeking compensation because the landlord failed to fulfill the reason indicated on the 2 Month Notice.

In the absence of a written submission or particulars other than "unlawful eviction" I found the tenant had not provided sufficient particulars as to the nature or reasons for the claim. Nor, was the nature of the claim obvious from the evidence provided. The Act requires that an applicant provide full particulars so that a respondent is aware of the claims being made against them and is afforded the opportunity to respond or defend himself in keeping with the principles of natural justice. Having found the tenant did not provide full particulars with respect to her claim for "unlawful eviction" I dismissed this portion of her claim with leave to reapply.

The balance of this decision deals with the tenant's claims to recover the cost of fixtures she purchased for the rental unit, utilities she paid to the landlord, and return of double the security deposit and pet damage deposit.

Issue(s) to be Decided

Has the tenant established an entitlement to recover the amounts claimed against the landlord?

Background and Evidence

The tenancy was set to commence May 1, 2014 although the tenant was given possession of the rental unit on April 29, 2014. The tenant paid a security deposit of $475.00 and was required to pay rent of $950.00 on the 1st day of every month. During the tenancy the tenant gained the landlord's consent to have a pet and was required to pay a pet damage deposit of $475.00. The parties were in dispute as to whether the

tenant actually paid a total of $850.00 or $950.00 for the two deposits. The tenancy ended May 31, 2015 pursuant to an undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property.

Despite its short duration, this tenancy was strife with difficulties which lead to multiple dispute resolution proceedings that the parties' referenced during this proceeding.

Below, I have summarized the tenant's claims against the landlord and the landlord's responses.

Purchase of towel rack and porch light fixture

The tenant submitted that the bathroom did not have a towel rack and the porch light was not working. The tenant included these deficiencies on a list of repairs she gave to the landlord. The tenant testified that she waited some time for the landlord to address the issues but the landlord did not. Nevertheless, the tenant submitted that the landlord's former female agent, who was not at the hearing, had verbally agreed to reimburse the tenant if she purchased the items. The tenant submitted that she purchased the towel rack and porch light for $56.98 and $68.98 respectively. The tenant stated that she installed the towel rack on the wall whereas the landlord's electricians installed the front porch light. Both the towel rack and light fixture were left at the rental unit when the tenant vacated.

The landlord acknowledged that the tenant had submitted a long list of repairs she sought at the property. The landlord explained that they took action with respect to the items that were determined to be necessary but did not make all repairs the tenant wanted because the house is located on property slated for future development. The landlord stated there was no agreement to reimburse the tenant for the cost of the fixtures she purchased. The landlord acknowledged that their electricians may have installed the front porch light fixture at the tenant's request when they were sent to the property by the landlord to address other electrical issues at the property. The landlord suggested that the landlord's trade persons are often accommodating and that they did not invoice the landlord for installation of a light fixture.

Payment of hydro to landlord

The tenant submitted that she was not required to pay for electricity at the property yet when the landlord requested payment of $206.86 on October 7, 2014 for a portion of the hydro bill the tenant paid $200.00 on October 31, 2014.

I noted that the tenancy agreement submitted as evidence by the tenant indicates that electricity is not included in rent. The tenant's responses were two-fold: that the requirement to pay hydro was unconscionable since there were more occupants in the basement suite below and tenants in an adjacent house were using the laundry facilities in the residential property.

I asked the tenant to suggest a reasonable allocation of hydro to which she stated zero percent should be allocated to her.

The tenant pointed to previous dispute resolution decisions in support of her position that she is entitled to recover the $200.00 she paid to the landlord for electricity.

The landlord submitted that electricity was not included in rent. The hydro account was in the landlord's name and the landlord apportioned the bill to the tenant and the tenants in the basement suite based on square footage. The landlord also pointed out that before allocating the bill to the units at the residential property the landlord deducted $40.00 in recognition that other tenants were using the laundry facilities in the residential property. The landlord submitted that the laundry machines electricity consumption was estimated using the BC Hydro website and the result was rounded up for the benefit the tenants at this residential property.

Double security deposit and pet damage deposit

The tenant submitted that she paid a total of $950.00 in deposits to the landlord. I noted that the portion of the tenancy agreement that provides for the deposits was cut off on the photocopy submitted to me. The tenant pointed to previous dispute resolution decisions where it is recorded that the parties provided "undisputed" evidence that the tenant paid deposits totalling $950.00.

The tenant testified that she gave her forwarding address to the landlord, in writing, on May 4, 2015 when she gave him a letter at the rental unit and that the landlord had signed to acknowledge receipt of the letter. The tenant pointed to the letter in the evidence package before me. The letter was originally type-written and the landlord's signature appears on the bottom right hand corner; however, hand-written statements were added to the document at some point, including a forwarding address.

The tenant testified that she gave the landlord her forwarding address again sometime in June 2015.

The tenant submitted that the landlord refunded $850.00 to her by way of a cheque issued on June 15, 2015 but received by her in the mail on July 3, 2015.

The landlord acknowledged that he did not dispute the tenant's submissions that she paid $950.00 in deposits during the previous dispute resolution proceedings as the amount of the deposits was not an overly relevant matter for those proceedings. The landlord has determined that only $850.00 is recorded as being received from the tenant for deposits, comprised of a number of partial payments made by way of a cheque. The landlord had noted that in a previous dispute resolution proceeding the tenant had claimed that one payment of $100.00 had been made in cash rather than a cheque. The landlord highly doubted that a cash payment was made given the acrimonious relationship and the tenant's requests to document everything exchanged between the parties. Nevertheless, the landlord had not considered the $100.00 discrepancy a significant matter in the past.

The landlord pointed out that the May 4, 2015 letter to which the tenant pointed to in her submission was not in the evidence package given to the landlord. The landlord recalled receiving the type-written letter and signing for it at the rental unit in early May 2015 but he did not recall the handwritten address being provided at that time. Rather, the landlord submitted that the tenant did not provide a forwarding address until she served the landlord with evidence for this proceeding in late June 2015. The landlord had prepared a refund cheque for the deposits on June 15, 2015 but had not mailed it until the address was received from the tenant in late June 2015.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the tenant has the burden to prove her claims against the landlord, based on the balance of probabilities. It is important to note that where one party provides a

version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In keeping with the above, I provide the following findings and reasons with respect to the tenant's claims against the landlord.

Purchase of towel rack and porch light fixture

The tenant indicated on her application that she was seeking compensation for emergency repairs she made; however, installation of a towel rack and purchase of a porch light do not meet the definition of an emergency repair, as defined under section 33 of the Act. Thus, the tenant is not entitled to compensation for emergency repairs and I proceed to consider whether the tenant is otherwise entitled to recover the cost of these fixtures.

Where a tenant is in need of repairs, other than emergency repairs, the tenant's remedy is to make the request to the landlord and if the landlord does not take sufficient action the tenant may file an Application seeking repair orders and/or an Arbitrator's authorization to make the repair and recover the cost from the landlord. The tenant's remedy is not to make the repair and then demand payment from the landlord or seek payment retroactively.

In this case, the tenant did not seek repair orders or obtain an Arbitrator's authorization to make the repair and recover the cost from the landlord. As such, in order to succeed in this claim, the tenant must establish that she had the landlord's agreement to reimburse her for the purchases she made. The tenant submitted that she had received verbal agreement from the landlord's former female agent that she would be reimbursed the cost of these two purchases. The landlord disputed this position. Since I was presented disputed verbal testimony, I turn to the documentary evidence in an effort to determine whether the landlord's agreement had been obtained.

I find the tenant's documentary evidence does not support her position that she obtained the female landlord's agreement for reimbursement. Included in the tenant's evidence is an email she wrote to the landlord's former agent on September 25, 2014 where she states:

> Regarding the lights and broken fixtures in the bathroom. If I don't hear from you by 10/12/14…I will purchase and replace the towel bar … I will also look for a front porch light. I will submit the receipt.

The tenant did not submit documentation to demonstrate the landlord responded to the email. Nor, did the tenant submit receipts for the purchase of the towel rack and light fixtures. Rather, she submitted a "quote" dated June 2, 2015 and I presume she submitted the original receipts to the landlord and did not keep a copy. If the landlord had agreed to reimburse the tenant and the tenant submitted the receipts, it begs the question as to reimbursement was not made. The only conclusion is that the landlord did not agree to do so.

In light of the above, I find the tenant did not satisfy me that she had the landlord's agreement for reimbursement. Therefore, I find the tenant purchased these items on own volition and she is not entitled to recover the cost of her decision from the landlord..

Payment of Hydro to Landlord

I have reviewed the tenancy agreement and I find that it is clear that electricity was not included in rent. Considering the monthly rent did not include hydro I find the tenant had an expectation that she had to pay for electricity she consumed during her tenancy As such, I find that costs of electricity consumed by the tenant would be the tenant's expense in addition to her monthly rent obligation.

I find the tenant's submission that she should be required to pay nothing for hydro during her tenancy to be unsupported by the tenancy agreement, unreasonable and inconsistent with her own documentary evidence. For example: in her evidence is a hand-written letter she wrote to a different property manager (I refer to by his first initial "K") where she states: "I requested separate hydro supplies. In the meantime here is my check for $200 without prejudice". She also wrote that if separate hydro supplies were not provided she would pay $1,000 per month for rent and hydro.

Evidently, the landlord did not install two separate hydro meters and I do not see evidence that she paid anything more for hydro other than $200.00.

The tenant pointed to a previous dispute resolution decision in support of her position that electricity was included in rent. I have read that decision in its entirety. The Arbitrator cancelled a Notice to End Tenancy for Unpaid Rent or Utilities on the basis the landlord did not have cause to end the tenancy for utilities not paid to the landlord under section 46 of the Act. However, I find that dispute is distinct from this one in that the landlord had a burden to prove that the tenant's failure to pay for hydro warranted eviction under section 46 of the Act. Whereas, in this case, the tenant has a burden to prove she is entitled to recovery of an amount paid to the landlord for hydro.

Although I heard that there were more occupants in the basement suite and there were others using the laundry facilities, I find that a payment of $200.00 for electricity in a 13 month tenancy is not excessive, unreasonable or unconscionable especially when I consider that she had indicated a willingness to pay $50.00 per month for hydro in her letter to “K”. Therefore, I deny her request to recover the $200.00 she did pay to the landlord for hydro.

Double security deposit and pet damage deposit

The Act provides that a landlord has to either return a security deposit and/or pet damage deposit, or file an Application for Dispute Resolution to make a claim against it, if the landlord does not have the legal authority to keep the deposit as provided under the Act. The time limit for refunding the deposit or filing a claim against it is 15 days from the date the tenancy ended or the landlord receives the tenant’s forwarding address in writing, whichever date is later.

In this case, the tenancy ended May 31, 2015 and the landlord mailed the security deposit to the tenant in late June 2015. In dispute was when the landlord received the tenant’s forwarding address. The tenant bears the burden to prove when she provided her forwarding address to the landlord in writing.

The tenant submitted that it was given on May 4, 2015 and the tenant pointed to a letter in support of her position. However, the landlord submitted that the evidence provided to me was not provided to the landlord. Given the landlord had raised issues with respect to service of evidence upon the landlord at the commencement of the hearing, I accepted that it was reasonably likely this letter was missing from the evidence package served upon the landlord.

The landlord did acknowledge receiving a letter from the tenant in early May 2015 that was type-written; however, the forwarding address portion was hand-written. Since the tenant’s evidence was not served upon the landlord and the tenant did not otherwise indicate in her submissions when she provided a forwarding address I find the tenant’s assertion made during the hearing did not provide the landlord the opportunity to provide evidence in response.

Considering the tenant has the burden of proof; had an obligation to provide sufficient particulars with her application, and serve the landlord with all of the same evidence she provided to me; I find she failed to establish she gave the landlord with a forwarding address on May 4, 2015 as she claims. Therefore, I prefer to rely upon the undisputed

testimony of both parties that the tenant provided a forwarding address to the landlord in late June 2015 when she served the landlord her amended application. Accordingly, I am satisfied the landlord did mail a refund cheque to the tenant within 15 days of receiving the forwarding address.

With respect to the amount of deposits the tenant paid to the landlord, the tenant bears the burden to prove the amount paid as she is the applicant. Unfortunately, the security deosit and pet damage deposit section of the tenancy agreement was not provided to me by the tenant. The tenant relies upon previous dispute resolution decisions to establish that the sum of deposits she paid as being $950.00. The landlord provided opposing verbal testimony and relied upon his verbal submission that the landlord's records reflect deposits totalling $850.00. While I find the parties verbal submissions equally probable, knowing that the previous dispute resolution decisions indicated "undisputed evidence" that the deposits totalled $950.00, I find the landlord should have put forth some effort to make the landlord's position known before this hearing and serve evidence to substantiate that position, such as the accounting records to which the landlord referred. As the landlord indicated that a dispute over $100.00 is not overly significant to the landlord I am of the view that the landlord chose not to submit and serve evidence to establish the landlord's position and I find the previous dispute resolution decisions tip the scales in favour of the tenant. Therefore, I order the landlord to pay the tenant a further $100.00.

Conclusion

The tenant has been awarded $100.00 and has been provided a Monetary Order to serve and enforce against the landlord.

The tenant's claim for compensation for "unlawful eviction" was dismissed with leave.

The balance of the tenant's claims were dismissed without leave.

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: October 30, 2015

Residential Tenancy Branch