



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, FF
Tenant: MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The first hearing was conducted via teleconference and was attended by two agents for the landlord; the tenant; and his advocate. The first hearing was adjourned as per my interim decision written on August 18, 2015 and the second hearing was scheduled solely for the purpose of allowing the tenant to submit and present his evidence in response to the landlord's claim.

My interim decision and the notice of the second hearing call in procedures were sent to each party directly from the Residential Tenancy Branch. Based on the tenant's submission of evidence and the attendance of his advocate I am satisfied that he was sufficiently served with notice of this hearing.

The tenant did submit photographic and informational evidence, however, he himself did not attend the hearing. I note the tenant was represented by his advocate. I also note that the advocate attending the hearing on November 2, 2015 was a different advocate than the one who attended the first hearing.

The advocate did confirm that she was aware of the previous proceedings and was prepared to represent the tenant however she did expect the tenant to attend the hearing. The reconvened hearing lasted 17 minutes and the tenant did not call into the hearing. I find the tenant was represented at the reconvened hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for utilities; for compensation for garbage removal; for all or part of the security deposit, and to recover the filing fee paid by the landlord, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by both parties on February 25, 2008 for a 1 year and 6 day fixed term tenancy beginning on February 22, 2008 that converted to a month to month tenancy on March 1, 2009 for a monthly rent of \$760.00 due on the 1st of each month with a security deposit of \$380.00 paid.

The tenancy ended on October 31, 2014. The parties agree the landlord received the tenant's forwarding address on December 23, 2014. The landlord also confirmed that they had not returned the tenant's security deposit or filed an Application for Dispute Resolution until July 27, 2015 to claim against the deposit.

The landlord seeks compensation for an unpaid utility bill in the amount of \$170.73. The tenant did not dispute this claim at the first hearing and his advocate provided no testimony in regard to this claim in the second hearing.

The landlord also seeks compensation for the removal of garbage and discarded items from the rental unit in the amount of \$556.50. In support of their claim the landlord has provided photographic evidence and invoices.

The tenant submitted at the first hearing that he believed that the landlord took the pictures of the rental unit before he had finished moving out. He stated that he could provide photographic evidence to confirm that he has some of the items in the landlord's photographs at his current rental unit.

Specifically, the tenant stated, at the first hearing, that he has a set of dishes; picture and frame (of New York skyline); and spice containers on his fridge in his current home that the landlord has photographs of.

At the reconvened hearing the tenant's advocate could not provide any further detail as to the content of the pictures. I did question the advocate, but without the tenant she could not provide any answers. Specifically, I asked the following questions:

1. In regard to the spice containers: I noted that in the landlord's photograph there were 12 containers and in the tenant's photograph there were at least 21 containers. I asked the tenant's advocate if she could advise how many containers the tenant originally had and had he purchased any more since he moved into his new rental unit;
2. In regard to set of dishes: I noted that the landlord's photographs showed one plate that was in the fridge and the tenant's photograph showed a set of dishes. I asked the tenant's advocate if she had any knowledge of the set and she was unable to provide any details, such as the number of place settings; and

3. The tenants advocate did submit that the tenant was adamant that the mattresses that were in the landlord's photographs, however I note that none of the tenant's photographs showed any evidence regarding mattresses. I note the tenant mentioned this in the first hearing as well. The landlord agreed to reduce their claim by the amount of the dump fees for the mattresses.

The tenant's advocate and I reviewed the remaining photographs from the tenant and compared them to the landlord's photographs but we could not see any items that were in both sets of the photographs.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept that the landlord does not dispute that they owe the tenant double the amount of the security deposit, pursuant to Section 38(6), because they failed to comply with the requirements of Section 38(1).

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the submissions of both parties I find the landlord has provided sufficient documentary evidence, in particular the photographic evidence confirming the condition of the rental unit at the end of the tenancy.

I find the tenant's photographic evidence, in the absence of any further explanation, does not provide any evidence that the landlord's photographs were taken any time other than after the tenant had left the rental unit.

Even if the photographs show some items may be in the tenant's current possessions I find that the fact the tenant has a certain set of dishes does not provide evidence the tenant failed to remove all of the dishes or that the spice containers could not have been repurchased, as they are fairly common containers.

As such, I find the landlord is entitled to the compensation, as claimed for the removal of the contents of the rental unit, with the reduction of \$30.00 for dump fees for the mattresses as per the landlord's agreement above.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$747.23** comprised of \$170.73 utilities owed; \$526.50 garbage removal and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct double the amount of the security deposit and the interest allowed in the amount of \$746.89 in partial satisfaction of this claim. I grant a monetary order to the landlord in the amount of **\$0.34**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 02, 2015

Residential Tenancy Branch

