



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on June 12, 2015 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on September 22, 2015 for:

1. An Order for the return of double the security deposit - Section 38.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The following are undisputed facts: The tenancy started on September 1, 2014 and ended on April 27, 2015. The Tenant shared the rental unit with 7 other tenants and each had their own tenancy agreement. Rent of \$750.00 was payable monthly on the

first day of each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The tenancy agreement contains an addendum that was signed by the Tenant. Section 3 of this addendum provides that the Tenant pays "hydro, cable and electricity". Section 5 of this addendum provides, inter alia, that late rent payments or NSF cheques are subject to a \$50.00 charge.

The Tenant states that the forwarding address was provided to the Landlord on May 29, 2015. The Landlord states that he is not sure when he received the correct forwarding address but likely did receive it first on May 29, 2015.

The Landlord states that despite the wording of the tenancy addendum, the Tenant is required to pay 1/8 of the costs of gas, electricity and water as verbally agreed. The Landlord claims \$870.00 for unpaid gas, electricity and water. The Landlord provides invoices for the electricity and gas.

The Tenant states that he only agreed to pay the utilities as provided in the addendum but that the provision for the payment of utilities is conflicting and not clear. The Tenant states that there is no indication of when the payments are to be made or how much the Tenant is to pay. The Tenant states that during the tenancy the Landlord told the Tenant that the utilities would be \$40.00 per month but then never enforced this payment. The Tenant states that the Landlord did not ask for any utility payments and that when he finally presented a bill to some of the tenants it was not accompanied by the actual invoices. The Tenant states that when the other tenants said they were not going to pay the amount calculated by the Landlord the Landlord threatened to evict these tenants so some of them did pay a 1/8 share of some of the utilities .

The Landlord submits that the Tenant has been late paying rent and utility bills and claims late fees of \$300.00.

Analysis

Section 7 of the Residential Tenancy Regulations provides that a landlord may charge an NSF fee or a late rent payment fee of no more than \$25.00 where such provision is contained in the tenancy agreement. Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. Given the provision for a late rent fee that is greater than what is allowed under the Regulations I find this to be inconsistent with the Act and therefore not enforceable. I therefore dismiss the Landlord's claim for late fees.

Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Given that the addendum provision for the payment of utilities includes both hydro and electricity, the same commodity, it does not refer to water or gas, there is no detail as to when such payments are to be made and accepting the Tenant's believable evidence that the Landlord at some point said the amount payable for the utilities would be \$40.00 as opposed to any proportionate share of the utilities, I find that the term does not clearly express the Tenant's obligations in relation to the payment of utilities and I find therefore that the term is not enforceable. I dismiss the claim for utilities. As none of the Landlord's claims have had merit, I find that the Landlord is not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety.

Section 38 of the Act 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 repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord made its application on June 12, 2015 I find that the Landlord made its

application within 15 days of receipt of receipt of the forwarding address and therefore is not required to pay the Tenant double the security deposit.

As there are no claims against the security deposit I order the Landlord to return the security deposit of \$750.00 to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$750.00**. 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: November 27, 2015

Residential Tenancy Branch

