



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, MNR, 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 Tenant applied for:

1. A Monetary Order for compensation - Section 67;
2. An order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. A Monetary Order for damages to the unit - Section 65;
2. A Monetary Order for compensation - Section 67;
3. An Order for unpaid rent or utilities - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

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

Was the unit habitable after the flood?

Is the Tenant entitled to return of rent paid?

Is the Tenant entitled to any other compensation?

Is the Tenant responsible for the damages to the unit?

Is the Landlord entitled to the compensation claimed?

Background and Evidence

The tenancy started on April 30, 2015 on a fixed term to end April 30, 2016. Rent of \$2,800.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$1,400.00 as a security deposit. No move-in inspection was completed.

The Tenant states that she moved out on May 7, 2015. The Landlord states that the Tenant moved out on May 8, 2015.

The Tenant states that she sent her forwarding address by registered mail on May 4, 2015 to the Landlord at the address provided in the tenancy agreement. The Tenant provided a copy of the registered mail receipt indicating the tracking number. The Landlord states that he did not receive a forwarding address and used the address provided by the Tenant on its application.

The Tenant states that on May 2, 2015 the unit flooded in the downstairs area. The Tenant states that a plumber came that day but was not able to repair the problem. The Tenant states that the flooding continued and despite several calls to the Landlord nothing was done so the Tenant called a city inspector who told the Tenant that the unit was not liveable. The Tenant states that they moved out of the unit on May 7, 2015 as it was not safe. The Tenant claims return of rent paid for May 2015 and return of double the security deposit. The Tenant also claimed moving costs of \$500.00 paid to a friend for the cost of a vehicle and moving. No receipt was provided.

The Tenant states that the Parties agreed to the rental amount on the condition that the Tenant would clean the Landlord's other units each month. The Tenant claims \$867.50 for cleaning these other units.

The Landlord states that the Tenant caused the flood by moving in early and by using the water lines. The Landlord states that when the plumber first came grass was found

in the toilet and the Landlord believes that the Tenant purposely put this in the toilet. The Landlord states that the plumber fixed the initial problem and the Landlord does not know why it continued to flood. The Landlord provided an invoice from someone indicating that work was done to the main sewer line. This receipt indicates that the sewer back up likely occurred due to tree roots. The Landlord states that this notation was made for his insurance coverage. The Landlord claims costs for the repairs.

The Landlord states that the Tenant caused so much damage that the unit is still not fixed and the Landlord has not been able to rent the unit. The Landlord claims that the Tenant should pay at least 6 months' worth of rents. The Landlord states that the Tenant failed to hook up the utilities and that the Landlord had to hook them up. The Landlord claims \$500.00. No utility bill was provided for this claim. The Tenant states that the utilities were connected at the onset and disconnected when they moved out. The Tenant states that the utilities were in her name and have been paid for.

The Parties agree that the Tenant agreed to keep the lawn mown during the tenancy and that the Tenant did not mow the lawn. The Landlord states that as a result of the Tenant having the city inspector to the unit the Landlord received a letter from the city demanding that the yard be cleaned up. The Landlord states that he paid a person \$1,000.00 for hauling away garbage and cutting the lawn. The Tenant states that given the flood there was no time to mow the lawn. The Tenant states that the garbage was present prior to the tenancy starting and was not the Tenant's garbage. The Landlord states that the Tenant was given the keys to the unit 2 weeks in advance and there was plenty of time for her to mow the lawn.

Analysis

Section 32 of the Act provides that a landlord must maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy

agreement, the landlord or tenant must compensate the other for damage or loss that results.

Given the Landlord's receipt evidence that the sewer backed up likely due to tree roots, I find that the Landlord has failed to substantiate that the Tenant caused the sewer to back-up and subsequently flood into the unit. As a result I find that the Landlord has failed to substantiate that the Tenant caused the Landlord any loss. I therefore dismiss all the repair costs and rental income claimed by the Landlord. Given the lack of a receipt for the lawn care and garbage removal and accepting the Tenant's believable evidence that the garbage was pre-existing I find that the Landlord has failed to substantiate an entitlement to costs for landscaping and I dismiss this claim. Given the lack of utility invoices and considering the Tenant's credible evidence that all utilities were paid for the period that the Tenant lived in the unit, I find that the Landlord has failed to substantiate that the Tenant owes any utilities to the Landlord or that the Landlord incurred the costs claimed. I dismiss the claim for unpaid utilities. As none of the Landlord's claims have been successful I decline to award recovery of the filing fee and in effect the application is dismissed.

As the Tenant's claims for work done on other of the Landlord's units is not part of the tenancy agreement I find that the Tenant may not claim this amount in this dispute process and I dismiss the Tenant's claim for these costs.

Given the Landlord's non-response to the continued flooding I find that the Landlord failed to act reasonably in the face of an emergency in the rental unit. I also accept that the unit was found to be unliveable by a city inspector and that the Tenant had no choice but to move out and incur unexpected costs to move. However given the lack of an invoice for moving costs I find that the Tenant has not substantiated the amount of costs claimed and I find that she is only entitled to a nominal amount of **\$100.00** for the Landlord's breach

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As the Tenant was not able to live in the unit and considering that the Tenant did not have a liveable unit from the near onset of the tenancy, I find that the Tenant is entitled to the return of the rent paid for May 2015 in the amount of **\$2,800.00**.

Section 23 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and the landlord must complete a condition inspection report and provide a copy to the tenant in accordance with the regulations. Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in. As no move-in inspection occurred I find that the Landlord's right to claim against the security deposit was extinguished at the onset of the tenancy.

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's right to claim against the security deposit was extinguished, the only option for the Landlord at the end of the tenancy was to return the security deposit within 15 days of the end of the tenancy. As the Landlord did not return the security deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the amount of **\$2,800.00**. As the Tenant's application has been partially successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,800.00**.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$5,800.00**. 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: December 18, 2015

Residential Tenancy Branch

