



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, RPP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for the cost of emergency repairs; for a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlord return the tenant's personal property.

The hearing did not conclude on the 1st day scheduled and was adjourned for continuation, and my Interim Decision was provided to the parties. The tenant and the landlord attended the hearing on both scheduled dates.

During the course of the hearing the landlord advised that the landlord has not received the Tenant's Application for Dispute Resolution or notice of this hearing, and heard about it by the tenant personally, and the parties joined the first day of the hearing both from the tenant's home. The tenant testified that the landlord was served by Express Post on November 25, 2015 and has provided a copy of a Canada Post Express Post receipt bearing that date. The tenant didn't check with Canada Post to see if the mail was received, but it was not returned to the tenant. I am satisfied that the landlord did what was required under the *Residential Tenancy Act*, however I also believe the testimony of the landlord, that the hearing package was not received. The hearing continued with the consent of the parties.

Issues to be Decided

- Has the tenant established a monetary claim as against the landlord for the cost of emergency repairs?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or

tenancy agreement, and more specifically for the costs incurred by the tenant during the tenancy?

- Has the tenant established that the landlord should be ordered to return the tenant's personal property?

Background and Evidence

The tenant testified that this tenancy began on June 1, 2014 and ended on September 9, 2015. No written tenancy agreement was prepared, however rent in the amount of \$1,200.00 per month was payable in advance on the 1st day of each month. On May 26, 2014 the tenant paid a security deposit to the landlord in the amount of \$600.00 and no pet damage deposit was collected. The rental unit was rented to the tenant fully furnished.

The tenant had given the landlord notice to vacate effective September 1, 2015, however the tenant had emergency surgery on August 31, 2015 and wasn't discharged from hospital until September 9, 2015, which is the day the tenant actually moved out. The tenant has not paid any rent for the 9 days in September, but there are no other rental arrears.

The tenant is not certain if the landlord was provided with a forwarding address in writing, however the landlord took some of the tenant's belongings to the tenant's new residence and knows where the tenant lives. The landlord has not returned any portion of the tenant's security deposit. The tenant claims \$600.00.

The tenant also claims \$108.94 for the cost of hiring a cleaning company that cleans move-ins and move-outs. The tenant was not satisfied with the cleaning prior to moving in, including the inside of the fridge. Cleaners hired by the tenant found white socks and paper under furniture, which shows that it was not thoroughly cleaned before the tenant moved in.

Also, after moving in, the odor and appearance of the carpet in the rental unit was unpleasant, although the landlord said that she had just cleaned the carpets 2 months before. The tenant hired a cleaning service to clean the living room and bedroom carpets on July 18, 2014 at a cost of \$153.32. The tenant claims that amount from the landlord.

The tenant further testified that she had to have keys to the rental unit re-cut on July 9, 2014, saying that she doesn't know what happened but the keys were not in her purse, and not wanting to leave the door unlocked, the tenant called the landlord that day. The landlord didn't get back to the tenant about it until August 23, 2014 and the tenant had

new keys cut on July 9, 2014 at a cost of \$95.28, and an extra key was given to the landlord. The tenant claims the cost of \$95.28.

The tenant was beginning to feel something might be biting the tenant while asleep and the tenant called a pest control company, who inspected the rental unit, removed the mattress from the box-spring and found no evidence of bedbugs. Due to the soiled carpeting, the tenant thought that perhaps fleas or something from pets of previous tenants had been left behind. The bill was \$131.25, a copy of which has been provided and is dated August 4, 2014. The tenant claims that amount as against the landlord.

On August 11, 2014 the stove broke, and the tenant didn't know if she should have it fixed or if she should call the landlord. So the tenant called an electrician who repaired it and the tenant paid \$99.75 for that service. A copy of the invoice has been provided. The tenant asked the landlord for reimbursement and the landlord said she would call the electrician to find out what he did, but the landlord never got back to the tenant about it. The landlord reduced rent by about \$46.00, and the tenant claims the difference.

In April, 2015 the tenant went to a building centre to get a powder for eradication of silverfish. Staff at the building centre told the tenant to spread it around the corners of rooms along the bottom of the floor. The tenant claims the cost at \$16.58, and a receipt has been provided.

Some items have not yet been returned to the tenant, such as a red umbrella, a queen size blanket, cleaning supplies and groceries. The landlord visited the tenant in the hospital and the tenant told the landlord to take the perishable food, but that the tenant wanted the other food-stuff. The landlord wrote down all of the items, and a list has been provided. Not all of the items on the list have yet been returned to the tenant.

The landlord testified that some of the costs incurred by the tenant were taken upon by herself even though it had been previously done. The stove still functioned, and the landlord could have had a less expensive service person make the repair rather than an electrician. The landlord agreed to reduce rent by \$46.00 for the repair.

The landlord had hired a cleaner when the tenant said the rental unit wasn't clean enough, and the cleaner didn't pull out the couch but the rest of the rental unit was cleaned.

The landlord also spent quite a bit of money on traps for bugs for the rental unit. The landlord also provided sticky-tapes for pests, and told the tenant that the landlord wouldn't pay for a pest control company when they would do exactly that.

The landlord had a new tenant to move in on September 1, 2015, but they couldn't move in because the tenant was in hospital and couldn't move out. Paramedics broke glass to get in to get the tenant, and the landlord had to pack all of the tenant's items. Some items were missing and the tenant gave the landlord a list of grocery items. The landlord has all of that for the tenant. The landlord also called the tenant's new landlord to advise that the tenant was in the hospital and asked if the landlord could put the tenant's belongings in the new unit. The landlord did a lot of running around for the tenant doing personal errands and moving.

No rent has been paid for the 9 days in September and the tenant has not provided the landlord with a forwarding address in writing, and the landlord has not received the Tenant's Application for Dispute Resolution which contains the tenant's address. The landlord submits that no order for return of the security deposit should be made because the tenant has not yet provided a forwarding address in writing.

Analysis

Firstly, the *Residential Tenancy Act* states that a tenant may make emergency repairs and request reimbursement from the landlord, however the *Act* also specifies what emergency repairs are:

Emergency repairs

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

I find that none of the claims made by the tenant qualify as emergency repairs and therefore, I dismiss that portion of the tenant's application.

Where a party makes a claim against another party for monetary compensation for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;

3. The amount of such damage or loss, and
4. What efforts the claiming party made to mitigate any loss suffered.

With respect to the tenant's claim for the cost of cleaning the rental unit and carpet cleaning, the landlord testified that the rental unit and carpets had been cleaned prior to the beginning of the tenancy. A landlord is required to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. In the absence of a move-in or a move-out condition inspection report, or any evidence that the tenant advised the landlord at the beginning of the tenancy that the cleanliness was not acceptable, I am not satisfied that the tenant has established that the landlord failed to comply with the *Act* or the tenancy agreement, or that the tenant made efforts to mitigate. The tenant's claim for cleaning and carpet cleaning are dismissed.

The tenant testified that she misplaced her keys, and I see no reason that the landlord should pay for that loss. I find that the tenant has failed to establish that the landlord has failed to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the application.

The tenant testified that the pest control company found no pests, and the landlord did not agree to pay for such a service. A landlord cannot be required to pay without some evidence of the pests. Therefore, I dismiss that portion of the tenant's application.

With respect to the cost to repair the stove, the tenant called an electrician and without giving the landlord an opportunity to correct the situation. A landlord is entitled to deal with such repairs without the tenant jumping the gun and calling their own professional service personnel without the landlord's consent. The tenant doesn't need the consent if the repairs required qualify as emergency repairs, however having found that none of the tenant's claim qualifies as emergency repairs, the tenant's application for the stove repair cannot succeed. The tenant has been credited \$46.00 by the landlord for that repair, and I am not satisfied that the tenant is entitled to any other amount.

With respect to the tenant's claim for the purchase of bug treatment, the landlord testified that she as well put bug treatments in the rental unit, and the tenant did not dispute that. I am not satisfied that the treatments made by the tenant were any more effective than the landlord's treatment, or that the treatment purchased by the tenant was even necessary. The tenant has failed to establish that the landlord failed to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the claim.

With respect to the security deposit, the *Residential Tenancy Act* requires a tenant to provide the landlord with a forwarding address in writing, which in this case has not been done. The *Act* states that if a tenant does not do so within 1 year the landlord

does not have to return the security deposit. Therefore, I dismiss the tenant's application for return of the security deposit with leave to reapply.

With respect to the personal property of the tenant, the landlord testified that she has a list and is prepared to return those items, and has taken some items to the tenant's new rental unit. I make no orders at this time with respect to that because I believe the parties can settle that portion. If that matter does not settle within a reasonable time, the tenant will be at liberty to re-apply.

Conclusion

For the reasons set out above, the tenant's application for monetary compensation for the cost of emergency repairs is hereby dismissed.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The tenant's application for a monetary order for return of the security deposit is hereby dismissed with leave to reapply.

The tenant's application for an order that the landlord return the tenant's personal property is hereby dismissed with leave to reapply.

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: January 21, 2016

Residential Tenancy Branch

