



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC MNSD MND MNR FF O

Introduction

This hearing first convened, pursuant to the tenant's application for monetary compensation, on December 16, 2015. At that time I determined that it was appropriate to adjourn the hearing and allow the landlord time to file their own application to be heard together with the tenant's application.

The hearing reconvened on February 9, 2016. The tenant, the landlord and an agent for the landlord again attended the teleconference hearing. At that time, due to an administrative error, I did not have the landlord's application before me. I therefore adjourned the hearing a second time.

The hearing reconvened on March 30, 2016. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on August 1, 2015. Rent in the amount of \$900.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$450.00.

On October 27, 2015 the tenant served the landlord with written notice of her intention to vacate the unit as well as her written forwarding address. The tenancy ended on November 7, 2015.

Tenant's Application

The tenant stated that at the beginning of the tenancy there were several problems, including faulty wi-fi, which had been advertised as included in the rent; no access to the mailbox; and a broken lock. The tenant stated that as soon as she started asking the landlord about repairs or other issues, the landlord became unreasonable and harassed her. The tenant stated that she suffered a loss of quiet enjoyment because of the other tenants as well as stress and duress caused by the landlord's inadequate response to the tenant's issues. The tenant stated that the situation became so unbearable that she was forced to move out of the unit.

The tenant claimed compensation as follows:

- 1) \$900.00 for double recovery of the security deposit – the tenant provided her forwarding address in writing on October 27, 2015 and the tenancy ended on November 7, 2015, but the landlord did not return the deposit or make an application to keep the deposit until January 7, 2015;
- 2) \$95.00 for fencing and delivery fee – the tenant stated that the landlord stated she was going to install a fence, but she did not so the tenant had to pay for it herself;
- 3) \$6.35 for faxing and \$19.61 for pictures;
- 4) \$50.00 for house-sitting services – the tenant submitted that she could not be available when the landlord sought entry to the rental unit to do repairs, so she had to arrange for her daughter to house-sit for her;
- 5) \$1,555.00 for loss of quiet enjoyment and \$945.00 for reduced rent; and
- 6) \$395.00 for moving costs.

The landlord responded that she did not understand the tenant's claim, as the calculations did not add up. The landlord stated that the tenant was driving her crazy, as she would repeatedly text or email the landlord or call when the landlord was driving to work. The landlord stated that she would arrange for repairs, but the tenant insisted on being present each time, and her schedule did not always coincide with the handyman's schedule.

The landlord stated that wi-fi was not included in the rent, but they warned the tenant at the beginning of the tenancy that the service cut in and out all the time and they took steps to attempt to improve the wi-fi for the tenant's benefit.

Landlord's Application

The landlord claimed compensation as follows:

- 1) \$200.00 unpaid rent for October 2015 – the landlord had originally also claimed \$50.00 for a late fee, but in the hearing she stated that she was previously unaware that she could not charge a late fee that was in excess of \$25.00;
- 2) \$225.00 in prorated rent for November 1 – 7, 2015;
- 3) \$52.50 service fee – on September 5, 2015 the landlord hired an electrician to attend at the rental unit, but the tenant refused to allow him entry;

- 4) \$16.41 for materials and \$20.00 for labour to repair a broken rod in the bedroom closet;
- 5) \$295.59 for initial cleaning and repairs after the tenant moved out;
- 6) \$43.60 to replace the bathroom cabinet – the landlord stated that the tenant removed the bathroom cabinet;
- 7) \$310.00 for further cleaning, painting and repairs; and
- 8) \$29.80 for photocopying costs.

In support of her application the landlord submitted photographs, invoices and receipts.

The tenant's response to the landlord's claim was as follows. The tenant stated that the blinds were broken when she moved in, and they ended up getting broken even more. The tenant stated that there was a faulty lock and she never locked it because it never worked. The tenant stated that there were some light bulbs that were burnt out at the beginning and she replaced them, but they were expensive so she took them when she left. The tenant denied stealing the bathroom cabinet.

Analysis

Both parties submitted large volumes of evidence, much of which comprised emails and text messages. After reviewing the evidence, I find that much of the tenant's application is unwarranted, and portions of the landlord's application are not sufficiently supported.

The tenant is entitled to double recovery of the security deposit, as the tenant provided her forwarding address in writing on October 27, 2015 and the tenancy ended on November 7, 2015. The landlord did not return the deposit or apply within the required time frame to keep the deposit. I therefore grant the tenant \$900.00.

The tenant could have made an application during the tenancy for the landlord to comply with the Act or do repairs; however, she chose not to. I therefore find that the tenant did not take reasonable steps to mitigate her loss of quiet enjoyment or loss of use of any portion of the rental unit. The tenant did not have the landlord's written authorization to install the fence and she is not entitled to recovery of that cost. It was not required for the tenant to have a house sitter while the landlord or agents of the landlord carried out work in the rental unit. I therefore dismiss these portions of the tenant's claim.

The landlord is entitled to unpaid rent of \$425.00 for October and November 2015, as the tenant did not pay those amounts.

The landlord is entitled to the service charge of \$52.50 for the electrician who could not gain access to the rental unit, as the tenant's action of forbidding entry was the cause of that cost to the landlord.

I am not satisfied that the landlord properly carried out move-in and move-out inspections and completed condition inspection reports with the tenant, as required by the Act and regulation. The landlord therefore cannot establish the agreed-upon condition of the rental unit at the beginning of the tenancy. I therefore dismiss the portions of the landlord's claim regarding cleaning, repairs and painting and the bathroom cabinet.

Neither party is entitled to photocopying or photo development costs or other costs related to the dispute resolution process, aside from recovery of the filing fee.

As both applications were only partially successful, I decline to award either party recovery of their filing fee.

Conclusion

The tenant is entitled to \$900.00. The landlord is entitled to \$477.50. I grant the tenant an order under section 67 for the balance due of \$422.50. 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: March 25, 2016

Residential Tenancy Branch