Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order for the return of the security deposit and compensation under Section 38. The tenant further seeks return of rent paid for the month following the month they vacated. Additionally the tenant seeks moving costs. The application is inclusive of an application for recovery of the filing fee for this application. The tenant withdrew their claim totalling $3300.00 categorized in the application as *moving expenses:* for the first month's rent and the security deposit of the tenant's new rental unit.

Both, the tenant and the landlord were represented at today's hearing. Both parties submitted evidence to this matter and acknowledged receiving the evidence of the other. The landlord submitted late evidence; however the tenant accepted the late evidence stating they had reviewed it and were able to respond to it. As a result I determined all evidence admissible. Regardless, the parties were also permitted to present any relevant evidence in testimony. The parties were also provided opportunity to discuss their dispute with a view to settling all matters, to no avail. The hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?
Did the landlord fail to comply with a material term of the tenancy agreement?
Did the tenant give written notice of a failure / breach of the agreement?

Did the tenant allow a reasonable period for correction of the breach by the landlord after giving written notice of a failure / breach?

Background and Evidence

The relevant facts of the parties before me are as follows. I have benefit of the tenancy agreement. The tenancy began May 01, 2015 as a fixed term tenancy to August 31, 2016 but which has since ended. Rent was $2400.00 payable in advance on the 1st. of every month. The landlord collected a security deposit of $1200.00 at the outset of the tenancy, which they retain in trust. The tenancy ended earlier than contracted. The tenant purports they ended the tenancy September 30, 2015 pursuant to Section 45(3) of the Act. The parties agreed the tenant paid September and October 2016 rent in one payment and that the landlord holds October 2016 rent.

The landlord acknowledged that on October 13, 2015 they received the tenant's forwarding address in writing which included a request for return of the security deposit. The parties conducted a move in condition inspection at the outset of the tenancy of which the parties provided a copy of the report. Despite the limited information on the report the parties agreed there was no notable deficiencies and signed the report. The parties did not conduct a move out condition inspection. The parties disagreed on the reasons it did not occur and the parties acknowledged the events at the end of the tenancy were mired in conflict over its demise. The landlord did not make application to keep the security deposit.

On September 21, 2015 the tenant sent the landlord a letter highlighting a number of issues, however primarily concerns over the electrical service and lack of a heat source in the house. The tenant's letter informed the landlord they had purchased plug in heaters which when used purportedly compromised / overloaded the electrical system of the house – indicated by a smoke odor and darkening at the receptacles. As a result the tenant demanded the landlord inspect the electrical system by a qualified electrician. The tenant also complained there was no working furnace to which the landlord responded the oil-fed furnace would work as intended if the tenant supplied furnace

oil/fuel for the furnace as the tenancy agreement was that the tenant was responsible for heat. The parties agreed the tenancy agreement does not stipulate that rent includes heat.

In response to the tenant's letter the landlord provided evidence that on September 27, 2015 the landlord had a qualified electrician assess the electrical system – with the electrician reporting the system had been overloaded by the plug in heaters but that no fire had occurred in the wall, as was purported by the tenant. In the interim between September 21 and 27, 2015 the tenant attempted to start the oil furnace and discovered some oil leakage near the furnace. As a result on September 25, 2015 they called the fire department. The tenant provided the fire department's record of involvement stating the oil leak was "extremely small" as a result of the oil line to the furnace being "sheared off" at the oil tank. The parties argued over the damage to the furnace heat source and the course of events following September 25 to September 27, 2015. None the less, the landlord testified they confirmed to the tenant they would not repair the oil furnace - with a view to convert to electrical heating for the house. The parties again argued as to their respective conduct toward one another and the landlord's efforts at resolving the heating. The parties agreed they became embroiled in mistrust and accusations over their respective handling of the heating issues. 2 days later, on September 29, 2015, the tenant gave the landlord another letter outlining their dissatisfaction with the landlord's handling of events and the landlord's purported failure to address the inoperable furnace – and therefore notifying the landlord they were ending the tenancy, asserting the landlord had breached a material term, and for "unconscionable treatment". The tenant requested the return of their October rent of $2400.00, which they previously had paid, as they were vacating the following day. On September 30, 2016 the tenant again notified the landlord of their version of events and vacated the same day claiming a breach of the agreement. On the same day of September 30, 2016, the landlord confirmed to the tenant in writing their acceptance of the tenant's letter terminating the lease and that they, "should be out (the same day) today". Both parties pointed to their copious daily exchanges of e-mails over the electrical and oil furnace issues between September 25 and 30, 2016. Testimony from both parties

focused on the discrepancy of their version of events, which also served to confirm the disputatious nature of the tenancy relationship.

The tenant seeks recovery of their moving costs in the total of $690.44 arguing the landlord is responsible for their move from the unit because of the landlord's failure to comply with a material term of the tenancy agreement. The tenant provided receipts for their moving costs.

Analysis

On preponderance of the relevant evidence for this matter, I have reached a decision. **Section 38(1)** of the Act provides as follows;

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Despite the parties' disagreement as to the course of events surrounding the end of the tenancy it was available to the landlord to file for dispute resolution in the absence of agreement over the deposit. I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on October 13, 2015 and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a)	may not make a claim against the security deposit or any pet damage deposit, and
38(6)(b)	**must pay the tenant double the amount of the security deposit,** pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of $1200.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for **$2400.00.**

I find the parties effectively agreed the tenancy was ending September 30, 2015. The landlord provided written evidence they accepted the tenant's letter terminating the lease September 30, 2015. As a result, I find the tenant is entitled to the return of rent paid for October 2015. I grant the tenant the payable monthly amount of **$2400.00**. It must be noted the landlord has not filed for dispute resolution claiming loss of revenue, although they have a view to do so and inclusive of other matters.

I find the evidence is that in the period between September 21, 2015 and September 29, 2015 the parties were in a period of persistent dispute and duress over the issues before this hearing. I find the conduct of both parties was admittedly guided primarily by distrust of one another moving forward. I also find that a self-reported language deficit by the landlord may have played some role in unintended and aggravating communication between the parties during a tumultuous week of demands, accusations, ill-characterizations, and concerns by both parties. On reflection I am not convinced by the parties' testimonies, or their barrage of e-mail exchanges in the last week of the tenancy, that either party acted in good faith toward the other to resolve the heating / furnace issue.

I find the tenant identified a need for heating in the house, obtained space heaters, and then notified the landlord of their concerns about the electrical system upon utilizing them. I find the landlord responded appropriately to the electrical concerns but later

failed to gain the tenant's trust regarding the furnace. I find the relationship deteriorated after the tenant called the fire department over what the fire department categorized as a relatively small problem but which transpired into a source for additional conflict between the parties. I find both parties equally responsible for the demise of the tenancy relationship and end of the tenancy.

Moreover, I find that prior to September 21, 2015 the landlord was not aware the oil furnace was inoperable given the end of the summer season - nor were they aware of the tenant's use of plug in heaters, and the stress upon the electrical system. None the less, after receiving the tenant's letter the landlord attended to the electrical concerns within a reasonable period of time. As a result, I find it cannot be said the landlord failed to comply with a material term. Of course in the interim the fire department involvement and events of September 25, 2015 laid the ground for mistrust and suspicion. But primarily the events of September 25, 2015 – regardless of how the events came to be - caused the landlord to review how, moving forward, they would heat the house. Therefore, again I find it cannot be said the landlord failed to comply with a material term of the agreement by not repairing the furnace immediately. I find that by September 29, 2015 the tenant's letter of the same date effectively addressed the failed relationship as the basis for ending the tenancy. It must be noted that all relevant events took place in the span of 8 days. I find that any idle period after any of the tenant's written letters was within the realm of *reasonable*. Therefore, again it cannot be said the tenant allowed a reasonable period for correction of any purported breach after giving a written notice. As a result of all the above I find the tenant determined to vacate and the landlord may have been in agreement but the tenant cannot rely on the provisions of Section 45(3) upon which to seek compensation for moving costs due to the landlord's failure to comply with a material term of the tenancy agreement. I hereby **dismiss** the tenant's claim for moving costs.

As the tenant was sufficiently successful in their application I grant them their filing fee of **$100.00,** for a total award of **$4900.00.**

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **$4900.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: April 20, 2016

Residential Tenancy Branch