



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC MNSD OLC FF

Introduction:

Both parties filed Applications for Dispute Resolution and both attended the hearing. The landlord said he served the Application for Dispute Resolution by FedEx. The tenant said they only received 3 pages in June and none of the evidence. The landlord said the evidence was sent in December (the fire investigation report), and in May the letter from the previous owner, the BC Assessment and the utility bills and in June the amendment with the 3 pages of the hearing notification. After the landlord quoted the documents, the tenant said they got the fire investigation report and the Notice of Assessment but not the utility bills. The landlord reiterated that they were sent together with the Assessment in May. Both parties acknowledged service of the respective Applications for Dispute Resolution. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to sections 44 and 46 for unpaid rent and, pursuant to section 67, for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies for a return of twice the security deposit pursuant to section 38

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and damaged the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice her security deposit refunded and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced May 1, 2015, that rent was \$2300 a month and a security deposit of \$1150 was paid on February 10, 2015. A new owner took possession on October 1, 2015 and a correction is noted on the lease on February 16, 2015 that the tenant is responsible to pay the heat and electricity.

On or about November 16, 2015, a fire occurred. According to the Fire Investigator's Report an off site examination of the stove found the left side burner ON and in the HIGH position. There were no mechanical or physical defects found with the switch controls and no manufacturer's recall on this model. They classified the fire as accidental and said the ignition source was from the stove burner and the material first ignited was either overheated cooking oil or a cloth which came in contact with the hot burner. The tenant denied getting a copy of this Report but then agreed they did get it but before the landlord brought his Application for Dispute Resolution. In evidence is a FedEx receipt showing it was delivered on December 30, 2015. The landlord said the tenants did not respond so then he filed his Application for Dispute Resolution. The landlord filed his first Application on January 5, 2016, then an amendment May 5, 2016 and a further amendment on May 24, 2016. He said the amendments were because he had difficulty getting all the evidence necessary. He submitted some texts of ongoing efforts to negotiate in December 2015.

In evidence is a receipt from a Restoration Company claiming \$1,000 deductible from the insurance, a BC Hydro invoice for hydro from September 30, 2016 to November 13, 2016 for \$403.15, a City invoice for \$130.09 for water for January 2016 for \$130.09, an Assessment Change Notice showing the building is assessed now at \$10,000 with the previous assessment at \$64,600. In evidence is also a note signed by the previous owner saying he had fixed all the defects noted in the move-in inspection report. The landlord applies to have the tenant pay the unpaid balances of the invoices and to compensate the landlord for damage and renovation costs for a total of \$25,000.

The tenant said their Application is to obtain the return of double the security deposit pursuant to section 38. They have another hearing on June 28, 2016 to dispute a refund of rent and one free month's free rent. She said the fire was accidental, not their fault. The landlord said he kept the security deposit because of monies owed for the damage to the house. They provided a letter sent to the landlord on November 25, 2015 with their forwarding address and requesting the return of their security deposit.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the landlord satisfied the onus of proving the tenant violated the Act and their tenancy agreement by causing damage to the property on November 16, 2016. Although the tenant claimed this was 'accidental', I find they were responsible for the fire. This finding is supported by the Fire Investigation Report. Although the tenant claimed they did not get this report with the evidence, I find their first statements were inconsistent. They obviously knew the contents of the Report for they quoted some of it and when I questioned their knowledge, they agreed they got it in December 2015 "but it wasn't part of the Application". I find this was served by FedEx, the landlord tried to negotiate with them unsuccessfully so although served prior to the Application, I find it was sufficiently served for the purposes of the hearing. I find the landlord entitled to recover the \$1,000 deductible which he had to pay after the insurance recovery.

In respect to the tenant's obligation for unpaid rent, I find the tenancy agreement was frustrated as of November 16, 2016. I note Policy Guideline 34 defines Frustration.

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract....

The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

I find the fire on November 16, 2015 rendered the home uninhabitable so I find the tenancy agreement was frustrated and ended on that date. Therefore, I find the landlord not entitled to rent or utility bills beyond that date. I note if he had insurance for rental loss, he may be able to recover his rental loss in that way. In respect to the utility bills, I find the tenant responsible to compensate the landlord for them to the date of the end of the tenancy. I find the tenant responsible for a BC Hydro invoice for hydro from September 30, 2016 to November 13, 2016 for \$403.15 as this responsibility for hydro was noted on the lease. However, the lease notes water is included in the rent so I find the tenant not responsible to compensate the landlord for

the City invoice for \$130.09 for water for January 2016. I find insufficient evidence that these invoices were not served to the tenant. As stated previously, I find their answers were inconsistent and they admitted receiving the Notice of Assessment which the landlord said was with the invoices at service.

In respect to further compensation for devaluation and renovation of his property, I find the evidence is that the landlord's insurance covers the damage done by the tenant and he is not entitled to double recovery. As noted above, if he had insurance for rental loss, he would likely be compensated for that also.

In respect to the tenant's claim for the return of double their security deposit, I find pursuant to section 38 of the Act, the landlord had 15 days from the later of the end of the tenancy and the provision of the forwarding address in writing to either return the deposit or file an Application to claim against it. I find the forwarding address is in a letter dated November 25, 2015. I find the landlord in a letter dated December 28, 2015 refused to return the deposit and said he was deducting it for the fire damage but I find the landlord did not file their Application for Dispute Resolution until January 5, 2016 to claim against the Deposit which is beyond the 15 day time limit in section 38. Also, the Rules of Procedure 3.1 require the Application to be served within 3 days of filing. I find the landlord did not do this but delayed until the second amendment on May 24, 2016 which prejudiced the tenant's timely resolution of the refund of the security deposit. I find the tenant entitled to recover double their security deposit less amounts owed to the landlord.

Conclusion:

I find the parties entitled to compensation as calculated below. I find the landlord entitled also to recover filing fees for this application. The fining fees of the tenant were waived.

Calculation of Monetary Award:

Insurance deductible	1,000.00
Hydro bill	403.15
Filing fee	100.00
Less Double Security deposit (\$1150x2)	-2300.00
Balance in Monetary Order to Tenant	-796.85

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: June 22, 2016

Residential Tenancy Branch