



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNDC, MNSD, FF; CNR, MNDC, RR, FF

Introduction

This hearing addressed the landlords' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for damage to unit, for unpaid rent, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also addressed the tenant's cross application pursuant to the *Act* for:

- cancelation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, landlord BC and landlord EH attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The parties confirmed receipt of each other's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

At the outset of the hearing the parties testified that the tenant vacated the rental unit on June 29, 2016. Consequently, the parties are no longer seeking an order of possession or cancellation of the 10 Day Notice and these portions of their respective applications are dismissed without leave to reapply.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to unit, and for unpaid rent?

Are the landlords authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is either party entitled to a monetary order for money owed or compensation damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2013. Rent in the amount of \$760.00 was payable on the first of each month. The parties testified that the landlord provided the tenant with a legal Notice of Rent Increase increasing rent from \$760.00 to \$785.00 effective October 1, 2014. Both parties agreed the tenant never paid \$785.00 in rent but instead paid \$900.00 in rent effective October 1, 2014. The parties testified that it was verbally agreed rent in the amount of \$900.00 would be paid to cover the cost of an additional tenant that had moved into the rental unit. The tenant remitted a security deposit in the amount of \$380.00 at the start of tenancy. Although the tenant contended a pet deposit in the amount of \$500.00 was also paid at the start of tenancy, the landlord disputed this. The submitted tenancy agreement is typed but has a handwritten addition beside the security deposit indicating a \$500.00 pet deposit. It is the landlords' position that this was handwritten by the tenant after the tenancy agreement was signed.

Landlords

The landlords seek a monetary order of \$900.00 in unpaid rent for June 2016. The landlords claimed that the tenant did not pay any rent for the above month. The landlords further seek to retain the tenant's security deposit in the amount of \$380.00 in partial satisfaction of the outstanding rent.

The landlords are also seeking to recover the \$100.00 filing fee for this application from the tenant.

Tenant

The tenant testified that throughout her tenancy she regularly left her cash rent payment in the laundry room for the landlords to collect. The tenant testified that on June 1, 2016 she withdrew \$800.00 from her bank, placed it in an envelope with a note requesting rent receipts for the last three years, and slid the cash envelope under the laundry room door just after 7:00 a.m. The tenant has provided a copy of her vetted bank transaction statement showing a withdrawal of \$800.00 on June 1, 2016. It is the tenant's position that landlord EH had enough time to retrieve the rent from the laundry room before reporting to her workplace at 7:29 a.m. on the morning of June 1, 2016. The tenant has provided a copy of landlord EH's workplace check in and check out times. The tenant has provided a copy of a text exchange between herself and landlord BC regarding the June rent payment. The tenant explained she only paid \$800.00 in rent for June because the additional occupant was no longer living in the rental unit.

The tenant seeks a monetary order of \$300.00 for loss of laundry services, internet and cable. The tenant estimated that she was without laundry services for six weeks and has spent \$8.00 in laundry costs. She testified that the laundry room door was locked and when she texted the landlords for entry, her texts went unanswered. The tenant testified that from June 5, 2016 to June 29, 2016 she was without cable and internet.

The tenant is also seeking to recover the \$100.00 filing fee for her application from the landlords.

Landlords' reply

The landlords acknowledged the laundry room door is typically locked and past practice has been that the tenant would call or text when she required access. Landlord BC acknowledged that he did receive one text message on June 16, 2016 from the tenant in which landlord BC replied he could not allow access to the laundry room because it was temporarily blocked with storage goods that he was unable to move at that time because he was at work. Landlord BC offered to compensate the tenant for missed laundry services in exchange for a receipt but the tenant did not provide one.

Landlord BC explained that in June, the landlords' contract with their internet provider had elapsed and for two days, the internet and cable were down. Landlord BC testified that a new password was created for the internet and that he did not give this to the

tenant as she did not request it. Landlord EH testified that on June 17, 2016, she observed the tenant's television turned on in the tenant's rental unit. The landlords have provided an electronic recording of a conversation that took place June 5, 2016 with the tenant. The recording indicates the tenant was out of town, specifically in Winnipeg from June 6 to June 15, 2016. The tenant is claiming for loss of cable and internet during this time, specifically from June 5 to June 29, 2016.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Tenant

Section 43 of the *Act* establishes that a landlord may impose a rent increase up to the amount calculated in accordance with the *Regulation* or agreed to in writing and if a landlord collects rent that exceeds the *Regulation*, the tenant may deduct the increase from rent. I find the Notice of Rent Increase issued by the landlords and the unwritten verbal agreement was in contravention of the *Act*. Accordingly, I find the rent for this unit remains at \$760.00 per month, as per the written tenancy agreement. Therefore I find the tenant has overpaid rent in the amount of \$140.00 from October 1, 2014 to May 1, 2016 and \$40.00 for the month of June 2016 for a total overpayment of \$2,840.00 (20 months x \$140.00 + 1 month at \$40.00). I find the landlord owes the tenant \$2,840.00 as an overpayment of the rent.

In regards to the tenant's claim for the loss of laundry room services, internet and cable, I find the tenant incurred minimal loss. The tenant has not substantiated her claim that she was without laundry for six weeks. The landlord confirmed the laundry room door remain locked and confirmed one instance in which the tenant was refused entry to the laundry room. Based on the parties' testimony I find it probable the laundry room remained inaccessible to the tenant not more than six weeks but likely on more than one occasion during the month of June. As per the submitted evidence that the tenant

was in Winnipeg from June 6 to June 15, 2016 I find any loss in laundry services occurred in the 14 days between June 16 and June 29, 2016. I value the loss of laundry services to be 15% of the monthly rent of \$760.00 which amounts to \$114.00 per month and \$3.80 per day. I award the tenant \$3.80 for each of the 14 days for a total award of \$53.20 in laundry services. I prefer the testimony of the landlords over that of the tenant in regard to the loss of cable and internet. I find that the loss of cable and internet were due to a lapsed contract resulting in two days without cable and 14 days for internet as the password was not supplied. I value the loss of cable and internet to be 10% of the monthly rent of \$760.00 which amounts to \$76.00 per month and \$2.53 per day consisting of \$1.27 per day for cable and \$1.27 per day for internet. I award the tenant \$1.27 for each of the two days of loss of cable in the amount of \$2.54 and \$1.27 for each of the 14 days of loss of internet in the amount of \$17.78.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee paid for the application.

Landlords'

I find the landlords have not proven that the tenant breached section 26 of the *Act* by failing to pay rent when it is due under the tenancy agreement. Rather, I find that the tenant withdrew \$800.00 cash on June 1, 2016 as indicated in her bank records, and slipped it under the laundry room door as she normally did when paying rent. In regards to the rent payment, I prefer the testimony of the tenant over the landlords. The tenant was consistent in her testimony and did not waver in her version of what happened. The tenant's testimony was consistent with the text exchanges between the parties. In both her testimony and text exchanges, the tenant maintained that she placed the rent in an envelope under the laundry room door. The tenant went to great lengths to prove rent was paid, from bank statements to landlord EH's check-in time at work showing landlord EH had time to retrieve the rent. Further the tenant's admission that she only paid \$800.00 rather than the agreed upon \$900.00, assists with her credibility. I found the landlords' evidence to be less convincing. Accordingly, I find on a balance of probabilities that the tenant paid June rent in the amount of \$800.00. Based on my previous finding that rent for this unit remains at \$760.00 per month, I find the tenant overpaid June rent and the landlords are not entitled to a monetary order for unpaid rent.

Based on my finding that the landlords are not entitled to a monetary order, the landlords are not authorized to retain the tenant's security deposit. As per *Residential Tenancy Policy Guideline 17*, an arbitrator can award a tenant the return of a security deposit if the landlord has made an application to retain the deposit and is unsuccessful.

Based on this, I order the landlords to return the security deposit in the amount of \$380.00 to the tenant.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$3,393.52 against the tenant.

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: July 08, 2016

Residential Tenancy Branch