



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR MNSD MNDC FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord's Application was received at the Residential Tenancy Branch on December 15, 2015 (the “Landlord's Application”).

The Landlord applied for the following relief pursuant to the *Act*: a monetary order for unpaid rent or utilities; an order permitting the Landlord to keep all or part of the security deposit; a monetary order for money owed or compensation for damage or loss; and an order granting recovery of the filing fee.

The Tenant's Application was received at the Residential Tenancy Branch on December 21, 2015 (the “Tenant's Application”).

The Tenant applied for the following relief pursuant to the *Act*: a monetary order for the return of all or part of the security deposit; and an order granting recovery of the filing fee.

Both parties appeared at the hearing and provided their solemn affirmation.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order permitting her to retain all or part of the security deposit?

3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to an order granting recovery of the filing fee?
5. Is the Tenant entitled to return of the security deposit?
6. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

No written tenancy agreement between the parties was provided in evidence. Rather, the parties provided oral testimony regarding the terms of the tenancy agreement.

The parties agreed the tenancy began on or about January 1, 2014. Until July 31, 2014, the Tenant paid rent of \$2,100.00 per month. From August 1, 2014 to December 1, 2015, the Tenant paid rent of \$2,000.00 per month.

The parties agree the Tenant paid a security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00 at the beginning of the tenancy. The Landlord retains these deposits.

The Landlord's Claims

The Landlord's claims were summarized in a Monetary Order Worksheet, which I summarize as follows:

Item	Amount Claimed
Hydro (October & November 2015)	\$117.00
Gas (October & November 2015)	\$105.97
Power washing decks:	\$175.00
Fridge bulb and fire alarm batteries:	\$30.00
Cleaning under fridge:	\$25.00
Cleaning windows and frames:	\$125.00
Scrub bathroom floor/hair removal tub:	\$25.00
Remove dog hair from curtains and vents:	\$20.00
Remove dog hair from stairs/carpet	\$25.00
Rent (August 1, 2014-November 1,2015)	\$1,500.00
TOTAL:	\$2,147.97

The Landlord did not provide any photographic evidence of the rental unit, or receipts for expenses incurred. Indeed, the Landlord acknowledged many of the expenses claimed were estimates based on a rate of \$25.00 per hour for work performed by the Landlord.

The Landlord testified regarding her claim for \$1,500.00. She stated she sold the rental property on or about July 18, 2015. The Landlord then rented the entire property back from the

purchaser, and continued to rent the same suite to the Tenant while she lived in the other suite. There was no interruption in the tenancy.

Further, the Landlord testified to her understanding the Tenant was entitled to a free month of rent as a result of the sale of the rental property, although a notice to end tenancy pursuant to section 49 of the *Act* was not submitted with the evidence of either party.

According to the Landlord, the free month of rent was to be paid by a one-time rent reduction in the amount of \$1,000.00 in or about July 2014. The Tenant acknowledged she received this one-time rent reduction.

The Landlord testified that the remainder of the free month of rent (\$1,100.00) was to occur by way of a rent reduction of \$100.00 per month for eleven months until paid.

According to the Landlord, the Tenant continued to pay \$2,000.00 per month to the end of the tenancy, which was after the Tenant had been compensated.

The Landlord also testified the Tenant withheld half the rent for the month of November 2015. The Tenant agreed, believing she was entitled to do so to claim the balance of the free month of rent.

The Tenant provided oral testimony in reply. She agreed she is obligated to pay the Hydro bill (\$117.00) and 60% of the Gas bill (\$63.58). The total amount the Tenant agreed to pay to the Landlord is \$180.58.

The Tenant also testified she does not agree that the amounts claimed by the Landlord for cleaning are reasonable. She stated she cleaned the rental unit before she moved out.

With respect to the Landlord's claim for bulbs and batteries, the Tenant submitted these kind of expenses are the Landlord's responsibility.

The Tenant also disagreed with the Landlord's claim for \$1,500.00. She maintained the rent reduction was made pursuant to a request to reduce rent due to her financial circumstances, and was not to be attributed to the free month of rent.

The Tenant's Claims

The Tenant testified she wants to have her security deposit and pet damage deposit returned. Further, the Tenant provided evidence confirming she provided the Landlord with her forwarding address on December 4, 2015, only three days after moving out of the rental unit.

The Landlord did not dispute she received the Tenant's forwarding address as claimed by the Tenant, and acknowledged the security and pet damage deposits have been retained.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided for 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.

In this instance, the burden of proof is on each of the parties in their respective claims to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, they must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the claiming party did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

The Landlord's Claims

I find that a tenancy relationship between the Landlord and the Tenant continued from January 1, 2014 to December 1, 2015.

The Landlord has claimed \$395.00 for cleaning the rental unit at the end of the tenancy. As noted above, this amount is based only on the Landlord's estimates. The Tenant disagrees, stating the rental unit was cleaned when she moved out.

I find the Landlord has provided insufficient evidence to establish she is entitled to the \$395.00 she has claimed for cleaning.

The Landlord has also claimed \$222.97 for utilities. In the absence of a written agreement between the parties describing the Tenant's share of utilities, or independent documentary evidence in support of the amount claimed, I find the Landlord has not discharged the burden of

proof upon her. Accordingly, the Landlord is entitled only to the amount agreed to by the Tenant, or \$180.58.

With respect to the Landlord's claim for the cost to replace batteries and bulbs, I find she has provided insufficient evidence to satisfy me she is entitled to be reimbursed for this expense.

Further, I find the parties agreed the Tenant would receive a free month of rent in the amount of \$2,100.00. I find this arrangement took the form of a one-time rent reduction of \$1,000.00, in or about June 2014, followed by a monthly rent reduction of \$100.00 for eleven months.

I am assisted in making this finding by the timing of the one-time rent reduction, and the implementation of the subsequent monthly rent reductions, which corresponded with the transfer of ownership of the rental property. In addition, I find it is more likely than not that the one-time rent reduction of \$1,000.00 would not have occurred if the Tenant was simply requesting an ongoing reduction.

Accordingly, I find the Landlord has satisfied me the Tenant under-paid rent for the months of July to October 2015, inclusive. The Landlord is entitled to receive \$400.00.

Further, having satisfied me the free month of rent was paid through the rent reductions, I find the Landlord is entitled to receive \$1,050.00 from the Tenant for the remainder of rent for the month of November 2015.

In summary, I grant the Landlord the sum of \$1,630.58, *subject to any set off below*.

The Tenant's Claims

The Tenant has claimed \$4,200.00 against the Landlord for retaining the security and pet damage deposits contrary to section 38 of the *Act*.

Section 38(1) of the *Act* describes what a landlord is required do with security and pet damage deposits at the end of a tenancy. A landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, either repay the deposits or make an application for dispute resolution claiming against the deposits.

Further, section 38(6) of the *Act* states:

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

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

The parties testified the tenancy ended on or about December 1, 2015. The Tenant provided her forwarding address to the landlord by email on December 4, 2015. The Landlord did not do either of the things required in section 38(1) of the *Act*.

In light of the above, section 38(6)(b) of the *Act* requires me to award the Tenant double the amount of the security deposit, or \$4,200.00, *subject to any set off below*, and I so order.

Set Off of Claims

I have found the Tenant owes the Landlord \$1,630.58.

I have found the Landlord owes the Tenant \$4,200.00, which consists of a doubling of the security and pet damage deposits pursuant to section 38(6)(b) of the *Act*.

Setting off the amounts owed ($\$4,200.00 - \$1,630.58 = \$2,569.42$), I order, pursuant to section 67 of the *Act*, that the Landlord pay the Tenant the sum of \$2,569.42.

As to the filing fees, I find both parties have some success, and therefore I do not award compensation for their filing fees.

Conclusion

The Tenant is granted a monetary order in the amount of \$2,569.42. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 15, 2016

Residential Tenancy Branch