



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mt, cnc, cnlc, cnr, mndc, mnsd, olc,erp, rr, psf, rpp, lre, opt, aat, lat, as, rrr, o

Introduction

The tenant has applied for dispute resolution, seeking a vast array of orders. The landlord has filed a cross-application, for a monetary order as against the tenant and to retain the tenant's security deposit. Both parties attended the hearing, and provided testimony. Submissions for the landlord were made by his counsel.

At the hearing the tenant confirmed that he has vacated the premises, and does not intend to return. His claim is therefore condensed to a monetary claim as against the landlord, and all other claims of the tenant are dismissed as moot.

I determined I would hear the landlord's claim, even though it was filed quite late. I accept that it was served upon a male adult residing at the address provided by the tenant in his application, satisfying the service requirements under section 89 of the Residential Tenancy Act. I note that the landlord's claim is straightforward, and the tenant had no difficulty in making a response to the merits of that claim, despite not having the particulars before him.

Issues to Be Decided

- Is the tenant entitled to a monetary order as against the landlord?
- Is the landlord entitled to a monetary order as against the tenant?
- What is the effect of offsetting one as against the other?

Background and Evidence

The background of this tenancy is already set out in a decision in file 851299, and I need not repeat all of those details. Based upon the evidence of the parties, I find the following to be the relevant facts regarding the present disputes:

1. The landlord has not returned the tenant's security deposit of \$475.00, even though the tenancy ended in November, 2016. The tenant has not provided the landlord with his new forwarding address in writing.

2. The tenant testified that at the start of the tenancy, he paid the sum of \$400.00 as rent for the initial period of April 18, 2016 to May 1, 2016. He seeks the return of that rent, alleging he did not move possessions in until about April 20, and did not reside there until about April 23. Prior to that time the premises were in disarray, and the landlord was working there making repairs and renovations. The landlord replies that the tenant wanted to secure the premises so that no other person rented it, offered to pay the pro-rated rent for April, and signed a tenancy agreement that the tenancy would begin April 18, 2016.
3. The premises housed several tenancies, but there was only one hydro bill. The tenancy agreement required that the tenants deal with the hydro utility between themselves. When the tenant's tenancy first began the hydro account was in the name of the tenant in suite 2. After a problem with the hydro being turned off, the tenant opened a new account in his name. He did not receive the full amount of the other tenant's share of the hydro, resulting in him paying \$419.77 more than he should have. He seeks this sum from the landlord.
4. The tenant testified he lost food valued at about \$200.00 when the hydro was off. He also assisted the landlord in evicting a tenant and placing a new tenant, and alleged the landlord initially promised he would receive compensation of the former tenant's deposit of \$325.00 for these issues. The landlord later reneged, and refused to pay him anything. The landlord replied that the tenants were to arrange the hydro between themselves and it was not the landlord's fault the power was cut off for 3 days. He further testified that no agreement was ever made that the tenant do work of evicting or placing new tenants, or that he be compensated in this regard. The landlord alleged that he found a new tenant himself.
5. The landlord testified that the tenant failed to pay rent for November. As confirmed by the tenant's mother's statement, she was removing the tenant's possessions on November 8 and 9. The landlord then changed the locks to the premises on November 10. The tenant testified he told the landlord he would not be able to pay November's rent until November 15, and submits the locks should never have been changed. Once the locks were changed, he was prevented from returning to the premises, and therefore should not be liable for November's rent.

Analysis

1. Return of the Security deposit:

Section 38(1) of the Residential tenancy Act requires a landlord to return the tenant's deposit only upon having received the tenant's new forwarding address in writing. Prior to filing his claim, the tenant had not yet provided this address to the landlord. The tenant's claim for return of the

deposit is therefore prematurely made, and is dismissed. The landlord's claim to retain the deposit is dealt with below.

2. Rebate of pro-rata rent paid in April

The parties agreed this tenancy would begin April 18, and pro-rata rent of \$400.00 was paid for the remaining 13 days of April. I accept the tenant's testimony however, that the premises were not yet ready for occupancy until 5 days later on April 23, when the tenant actually began residing there. Accordingly, the tenant is entitled to a rebate of this rent, calculated as 5/13 of the \$400.00 paid, which equals \$153.85. The landlord must pay this sum to the tenant.

3. Shared hydro

The provision that the 3 different tenants manage the single hydro account between themselves was a convenient one for the landlord, but is an unenforceable provision of the tenancy agreement, as there is no contractual agreement as between the tenants themselves that permits any such agreement to be enforced by them. Their agreements are all with the landlord. In a situation where the landlord has three tenancies sharing a single hydro account, the landlord must pay the hydro himself, and collect back any share owing by any tenant, or he can make tenancy agreements in which the rent includes hydro. Accordingly in the present circumstances, I order that the landlord reimburse the tenant the sum of \$419.77 representing the portion of the hydro bill paid by the tenant but due and payable by other tenants. The landlord retains liberty to claim such sums from his other tenants, as appropriate and should he choose.

4. Payment for lost food and for work done by the tenant

The tenant has not provided evidence of the food lost during the power failure, or the actual value of such food. The tenant has also not explained why the food could not have been refrigerated off site until the power was restored. In short, the tenant has failed to prove this aspect of his claim. As to the alleged work done by the tenant for the landlord in assisting in the eviction of a tenant and the placement of another, in the face of the landlord's denial that any such arrangement was even made, and in the absence of any supporting evidence of such an arrangement, I find that the tenant has not proven this claim on a balance of probabilities.

5. Rent for November

I find that the tenant remained in possession of the premises until November 10, 2016 when the tenant's goods were removed by his mother. The tenant is liable for rent for these 10 days. The changing of the locks by the landlord signalled the recovery of possession by the landlord, ending the requirement for the tenant to pay further rent after this time. The rent for 10 days ($\$950 \times 10/30$) equals \$316.67, and the tenant must pay this sum to the landlord.

6. Cost of changing locks

The locks were changed by the landlord while the tenant's mother was in the process of removing his possessions. I find that that task was not fully complete, and therefore do not find that the premises had been abandoned by the tenant by the time the locks were changed. The

landlord had no Order of Possession, and had no lawful right to change the locks at that time. Under these circumstances, the landlord is not entitled to recovery of the cost of changing the locks from the tenant.

In summary, I have awarded the sum of \$573.62 to the tenant, and \$316.67 to the landlord. Setting off one claim as against the other leaves a balance owing by the landlord to the tenant of \$256.95. This sum is ordered paid by the landlord to the tenant. Both parties claim for their filing fee. As both are partially successful in their claims, each party is entitled to receive their filing fee from the other, but following set off, no change to the sum payable by the landlord to the tenant occurs.

As the result of this set off, no money is due by the landlord to the tenant. I therefore decline to order that the landlord be permitted to retain the tenant's security deposit. Section 38(1) will continue to govern the issue of the tenant's deposit which remains held by the landlord.

Finally, I note that the landlord alleges that the tenant has not fully satisfied payment of a previous monetary order in file 851299, while the tenant contends it was fully paid. Enforcement of that previous order is outside the scope of my jurisdiction, and I make no decision or order in that regard.

Conclusion

Upon set off of one award against the other, the landlord must pay the sum of \$256.95 to 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: February 02, 2017

Residential Tenancy Branch