



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF
 MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord. The tenant's application also states that the tenant is seeking damages in the amount of \$1,125.00, which includes recovery of the security deposit.

The landlord and the tenant attended the hearing; each gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the tenant's evidence contains a forwarding address of the tenant that is not correct, and the tenant advised that someone at Service BC wrote that incorrect address and the tenant hadn't noticed. Therefore, the landlord sent evidentiary material to that incorrect address which has not been received by the tenant. The tenant agreed that the landlord's evidentiary material should be considered, and all evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for all or part of the security deposit?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The tenant testified that this month-to-month tenancy began on September 1, 2016 and the tenant moved out on January 16, 2017. Rent in the amount of \$750.00 per month was payable on the 1st day of each month and there are no rental arrears to the end of January, 2017. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$375.00 which is still held in trust by the landlord, and no pet damage deposit was paid. The rental unit is a 1 person dwelling cabin, and a copy of the tenancy agreement has been provided.

The tenant gave the landlord notice to end the tenancy effective immediately by sending an undated letter to the landlord by registered mail on January 13, 2017, a copy of which has been provided. It states that the notice is effective retroactively to January 1, 2017 due to having no water in the rental unit since the beginning of January.

The tenant was without any water at all in the rental unit from January 1, 2017 until he moved out, January 16, 2017. The landlord was delivering jugs of water to the tenant and then arrived at the rental unit saying that he wouldn't be bringing any more. The tenancy agreement specifies that water is included, and the tenant is on a disability pension and cannot carry large jugs. The tenant told the landlord that and told the landlord that he had to leave.

On January 16, 2017 the landlord attended the rental unit while the tenant's parents were there and the landlord was offered to keep the security deposit in lieu of additional notice to vacate but the landlord refused and it became a heated argument. The landlord had only offered to reduce \$100.00 from the rent and the tenant didn't feel that was adequate for having no water, and considering the water had froze 5 times prior. The landlord says that the water was back on the day after the tenant moved out, but the tenant finds that to be very peculiar. Having no water for an extended period of time is an horrendous situation, absolutely disgusting making the rental unit not habitable and that's what it came down to.

The tenant further testified that he provided the landlord with a forwarding address in writing on the Tenant's Application for Dispute Resolution which was also served by registered mail.

The tenant claims recovery of the rent paid for January, 2017, being \$750.00 as well as return of the \$325.00 security deposit and recovery of the \$100.00 filing fee.

The landlord testified that the water had froze during -33 degree weather for 3 days which affected the landlord's home as well as others in the neighbouring area. The landlord does not agree that pipes froze 5 times before January, 2017, but only once.

During the freeze-up in January, the landlord offered the tenant to move to a motel which could have had a kitchen suite allowing the tenant to cook meals and would have the same comforts as in the cabin, but the tenant declined and decided to stay in the rental unit. The landlord offered to pay for water and take some money off the rent, to which the tenant agreed, however about 2 nights later, the tenant's mother called the landlord suggesting a meeting on January 16, 2017. The landlord had not received the tenant's written notice to vacate the rental unit, but the tenant may have talked about it verbally, and giving notice mid-month is not sufficient for the landlord.

The landlord has also provided a USB stick which the landlord testified is a recording of a conversation the landlord had with the tenant and the tenant's mother. The tenant's evidence doesn't show that the landlord offered to put the tenant up in a motel and buy water. Also, the tenant's mother presented a written agreement that she wanted the landlord to sign saying that the landlord could keep the security deposit but is not able to go after the tenant for February's rent. The landlord did not agree and did not sign it. The landlord testified that the tenant's mother says in the recording that the landlord blew it by not taking the security deposit, but if the landlord had been able to re-rent for February 1, 2017, the landlord did not want to be accused of double dipping, and wanted the tenancy to end in accordance with the *Residential Tenancy Act*.

The landlord received a registered letter from the tenant's mother but left it at the post office until the landlord received another notification of registered mail from the tenant. On January 29, 2017 the landlord picked up both packages from the post office. The package from the tenant contained the Tenant's Application for Dispute Resolution and evidence.

The landlord advertised the rental unit on Kijiji, an on-line advertising service, and a copy of the advertisement has been provided. It is dated January 17, 2017 and states that the rental unit is available for February 1, 2017 at \$750.00 per month. The landlord testified that the advertisement was renewed 2 weeks later, and the landlord was successful in securing a tenant for March 1, 2017. It was during a vicious winter weather pattern and people were not looking for rentals at that time. Other prospective

tenants answered the advertisement, but it's a 1 bedroom cabin and not suitable for a tenant with children, and was not suitable for some of the prospective tenants' needs.

The landlord claims \$750.00 as loss of rental revenue for the month of February, 2017 due to the tenant's failure to give adequate notice to end the tenancy, recovery of the \$100.00 filing fee and an order permitting the landlord to keep the security deposit in partial satisfaction of the claim.

Analysis

The *Residential Tenancy Act* specifies how a tenancy ends, and when ended by the tenant, the tenant is required to give the landlord no less than 1 month's written notice the day before rent is payable under the tenancy agreement, and must end the tenancy at the end of a rental period. In this case, the parties agree that rent is payable on the 1st day of each month, and therefore I find that the tenant was required to give written notice prior to the 1st day of the month. The *Act* also states that the written notice must be signed and dated by the tenant, give the address of the rental unit, and state the effective date of the notice.

In this case, the tenant did not give any notice to the landlord that could be construed as complying with the *Act*. If there are issues with a rental unit that make it uninhabitable, there are other options open to a tenant, none of which include moving out without the required written notice unless the landlord otherwise agrees in writing, which didn't happen. The *Act* also specifies that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement.

Where a party makes a monetary claim against another party for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate the damage or loss suffered.

With respect to the tenant's claim for reimbursement of January's rent, there is no question that rent was paid to the landlord in full for January, 2017, the pipes froze and the tenant had no running water from January 1 to 16, 2017. The parties obviously had discussions about the tenant staying in a motel or reduction of rent, but nothing was agreed to in writing, and the parties do not agree on what was offered or agreed to.

I accept that the tenancy was devalued, but having found that the tenant could have taken an alternative approach rather than moving out in mid-month, I also find that the tenancy has not been devalued by an entire month of rent. The landlord disputes that there were 5 previous freezes in the pipes, and there is no evidence to substantiate the tenant's claim that there were 5 incidents prior to January, 2017, or their duration.

I also consider that water is an essential service and a material term of the tenancy agreement. The landlord's material suggests that the water started running again the day after the tenant moved out. Since the tenant moved out of the rental unit halfway through the month, the tenant did not suffer any damages for having no water after the 16th of January. I am satisfied that the tenant is entitled to recovery of half of the rent paid for the duration of his tenancy for January, or \$187.50 (\$750.00 rent, divided in half for the duration of the tenancy = \$375.00, divided by 2 = \$187.50).

I am satisfied that the landlord has not been paid any rent for the month of February, 2017 and that any notice given by the tenant in January would not have taken effect until the end of February. The landlord has provided evidence of having advertised the rental unit for rent the day after the tenant moved out for the same amount of rent available February 1, 2017, and I am satisfied that a suitable tenant could not be obtained until March 1, 2017. I find that all elements in the test for damages have been established and the landlord is entitled to \$750.00 for February's rent.

Having found that the landlord is owed \$750.00 and the tenant is owed \$187.50 in addition to the \$375.00 security deposit, I find it prudent to set off those amounts. I order the landlord to keep the \$375.00 security deposit and I grant a monetary order in favour of the landlord for the difference in the amount of \$187.50 (February's rent of \$750.00 – \$187.50 owed to the tenant = \$562.50, less the \$375.00 security deposit = \$187.50).

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$375.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$187.50.

This order is final and binding and may be enforced.

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: March 02, 2017

Residential Tenancy Branch

