



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to return of double the security deposit?

Are the Tenants entitled to compensation for their utility payments collected by the Landlord?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started on either March 31 or April 1, 2013. Rent of \$900.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit and \$100.00 as a pet deposit. The tenancy agreement provides for a utility payment as follows” “propane \$150 mth subject to change”. The tenancy ended on July 31, 2016 following the Landlord having issued the Tenants with a 2 month notice to end tenancy for

renovations and the sale of the unit. The Landlord did not pay the Tenant the equivalent of one month's rent for having ended the tenancy for either of these reasons. The Tenants provided it forwarding address to the Landlord sometime in August or September 2016.

The Tenant states that no move-in inspection and report was done. The Landlord states that a move-in inspection was done with a report to a "check off form" but cannot recall if the Tenant was given a copy of that report. The Tenant states that a move-out inspection was conducted with the Landlord's agent however no report was completed with a copy to the Tenant. The Landlord states that no report was done because the unit was left in a mess on the day of the inspection and that the Tenant said it would leave the unit clean. The Landlord states that a log was subsequently made out over the next month and a half. The Landlord provided photo evidence of the unit. The Landlord states that the security and pet deposit was not returned and no application claiming against the deposits has been made. The Tenant claims return of the security and pet deposits.

The Tenant states that at the outset of the tenancy the Tenant asked to have the propane utility costs in his name and the Landlord refused. The Tenant states that the Landlord told the Tenant that the propane costs would be adjusted at year's end. The Tenant states that despite asking for an accounting of the propane costs at each year's end and at the end of the tenancy the Landlord failed to provide any accounting. The Tenant states that the propane company provided the Tenant with a print out of the Landlord's propane costs for the term of the tenancy. The Tenant provides the propane company print out and claims an overpayment of \$3,223.44.

The Landlord states that she did receive copies of each of the propane bills with her statements for each year but that she had not yet reconciled the payments. The Landlord states that the statement provided by the Tenant is not correct as it is missing details and that the Tenant would have been given a copy of the bill at each delivery date. The Landlord states that for some periods the Tenant paid less than what the

Landlord was charged. The Landlord states that she has had all the propane bills of the tenancy in her possession for the past two months. The Landlord confirmed that she received them along with her yearly statement for payment. The Landlord states that the amount collected each month also included charges for maintenance. The Landlord states that these bills were not provided to rebut the Tenant's evidence as the Landlord thought there was no time left to provide this evidence.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. The Landlord did not deny that the propane costs and payments were to be reconciled at least yearly. The Landlord did not deny that the Tenant's evidence of propane costs was generated directly from the propane company. I note that while the Landlord states that she did not have time to submit the propane bills, I also note her contradictory evidence of having received yearly bills and statements. The Landlord did not submit any of her own accounting of the propane monies. Given the credible evidence of propane costs directly from the supplier and considering that the Landlord did not provide anything other than oral evidence to rebut the Tenant's evidence of costs, I accept the Tenant's evidence of costs and find on a balance of probabilities that the Landlord overcharged the Tenants for the costs of the propane utility. As a Landlord is obligated to maintain infrastructure that delivers heat to a rental unit in exchange for the rent collected, the Landlord could not collect an additional amount in a propane bill for maintenance of the propane tank. Considering the only bills presented are from the Tenant I find that the Tenant has substantiated a reimbursement of **\$3,223.44** as claimed.

Section 38 of the Act provides that 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, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on

the Landlord's evidence that the Tenant's forwarding address was received no later than September 2016, that no application to claim against the security deposit has been made and that the security deposits were not returned to the Tenant I find that the Landlord must now repay the Tenant double the combined security and pet deposit plus zero interest in the amount of **\$1,100.00**. As the Tenant's application has met with success I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total amount of **\$4,423.44**.

The Tenants remain at liberty to make an application in relation to compensation for the Landlord's act to end the tenancy. The Landlord remains at liberty to make an application in relation to any damages or cleaning the Tenant may have left in the unit at the end of the tenancy. I encourage both Parties to speak with an information officer at the Residential Tenancy Branch in relation to any future claims.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$4,423.44**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 24, 2017

Residential Tenancy Branch