



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF
 MNSD, MNDC, 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 unpaid rent or utilities 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; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to make submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the tenant advised that the landlord has returned the security deposit, and the application for a monetary order for its recovery is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of wages, reimbursement of rent, and moving expenses?

Background and Evidence

The tenant testified that this month-to-month tenancy began on September 15, 2016 and ended on January 15, 2017. Rent in the amount of \$900.00 was payable on the 1st day of each month,

and the tenant paid a pro-rated amount for the first partial month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 which was returned to the tenant in full, and no pet damage deposit was collected. The rental unit is a basement suite and the upper level of the home is also tenanted. No move-in or move-out condition inspection reports were completed, and there is no written tenancy agreement.

The tenant had complained to the landlord that the rental unit was cold, and the tenant in the upper unit had also complained. A vent from the dryer didn't have plate over it and it was -2 degrees. The tenant contacted the landlord asking the landlord to attend at the rental unit to talk. The tenant from the upper unit also attended. The tenant showed the landlord, who asked what the tenant wanted the landlord to do about it. The tenant said it needed to be fixed. The landlord had a piece of drywall cut out and old insulation was placed in the wall and it was left like that. Photographs have been provided. The tenant asked when it would be fixed and the landlord said it would be fixed when she came back from vacation in a week. The tenant waited a few days after the landlord's return, then texted asking for the repairs. The landlord replied that the tenant would get lots of notice. The tenant responded that it was not acceptable. The tenant called a contractor who said it would cost about \$500.00 and could be done in about 3 days, but the landlord said she'd be fixing it herself, but that never happened.

The landlord sent text messages asking the tenant to trickle water in the kitchen to prevent pipes from freezing, which did freeze several times. The tenant used a wall heater in the rental unit but that was disconnected when the furnace repair was done, and the tenant continued to complain to the landlord about being cold. The landlord told the tenant to talk to the tenant upstairs and didn't want to hear it. The tenant upstairs was turning the heat up, but it didn't help.

The tenant sent a letter to the landlord on December 24, 2016, a copy of which has been provided, requesting repairs to the holes under the kitchen and bathroom sinks, and a reduction in rent. The landlord said she wouldn't finish repairs until the weather had warmed up and told the tenant she could move out. That was toward the end of December, 2016 and the tenant moved out, giving notice on January 3, 2017 effective mid-January by placing it in the mailbox used by the parties for rent payments and mail. A copy has been provided. The tenant testified that rent was paid to January 15, 2017.

The tenant has provided photographs as well as a Monetary Order Worksheet setting out the following claims:

- \$272.00 for loss of wages due to illness and moving;
- \$85.00 X 2 for drop-off and pick up of a storage bin;
- \$134.00 per month for storage + an additional \$67.00 per month for the tenant's child's items;
- \$900.00 for recovery of rent from mid-December, 2016 to mid-January, 2017;
- \$450.00 for return of the security deposit, which is withdrawn; and
- \$100.00 as recovery of the filing fee.

The tenant had to move out due to health reasons and being cold all the time. There are no rentals in the area so the tenant rented a storage bin, and is currently staying with friends. The tenant has secured a new rental unit and takes possession on April 1, 2017. The tenant claims \$85.00 for drop-off and \$85.00 for pick-up of a storage bin for the tenant's personal effects. The tenant also claims \$134.00 per month for 3 months of storage rental, \$67.00 per month for 3 months for storage of her child's items, as well as the equivalent of 1 month's rent for the landlord's failure to provide and maintain the rental unit. The tenant testified that the landlord knew of the problems with the heat and didn't repair it.

The tenant has also provided a copy of a pay-stub from her employer to substantiate the amount of wages claimed.

The landlord testified that the whole house is rented to the tenant in the upper level, and this tenant is a sub-tenant of the tenant in the upper level. The landlord has a tenancy agreement only with the tenant in the upper level who asked if she could get a roommate and the landlord agreed. They decided between them that the sub-tenant would reside in the lower level, which has a summer kitchen and little separation between them. The landlord agreed to be cashier, and collected the security deposit from each of the tenants.

The landlord also testified that a fair bit of work was done to the heating system on July 13, 2016 and vents were installed then. A copy of an invoice for that work has been provided. When there was an extreme cold snap the water froze 3 times and the wall had to be opened up and pipes moved because they were too close to concrete. It was left open to ensure that it didn't freeze again. Also provided are invoices dated October 18, 2016 for repairs to the electric furnace and December 20, 2016, which shows a recommendation of installing 4 more heat runs to the basement. Three were added on December 22, 2016, and an invoice for that has also been provided by the landlord.

The landlord further testified that any time the landlord has been in the rental unit, she has never noticed that it's cold.

The tenant would lose her temper, and on one occasion called the landlord while the landlord had company. The landlord went to the rental unit and the tenant started yelling and screaming. Heating was addressed on December 22 by putting in 3 vents, but the problem was frozen pipes. It was – 30 degrees that night and the landlord also bought the tenant a heater.

The thermostat in the rental unit is controlled by the tenant in the upper unit, and they had issues about how warm or cold each preferred, but it didn't have anything to do with the landlord.

The landlord claims half a month's rent, or \$450.00 for the tenant's failure to give a full month's notice to vacate, as well as \$26.30 for the cost of office supplies for preparation for this hearing and postage.

Analysis

Firstly, I find that the landlord in this dispute is the landlord of the tenant by virtue of collecting rent and a security deposit, and returning the security deposit to the tenant, despite a previous written tenancy agreement with the tenant in the upper level.

With respect to the tenant's claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, in order to be successful, the tenant must establish 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 tenant made to mitigate any damage or loss suffered.

I am not satisfied that the tenant has established that the loss of work for illness was a result of the landlord's failure to comply with the *Act* or the tenancy agreement.

However, part of the tenant's claim for loss of wages has to do with moving, and the tenant claims other amounts for moving expenses as well. Where moving expenses are ordered, they are generally deemed to be the equivalent of 1 months' rent, which would be inclusive of the tenant's claims of loss of wages for moving, the cost of storage bins and monthly storage. Rent in this case was \$900.00 per month.

The tenant also claims \$900.00 for recovery of rent from mid-December, 2016 to mid-January, 2017 for discomfort. The rental unit was cold, the wall was left open and the pipes froze on 3 occasions. I accept that the tenant experienced some discomfort and that the landlord attempted to make repairs but due to the exceptionally cold weather, problems persisted and the landlord needed to make the cosmetic repairs after the weather warmed up. However, I also find that the tenancy has been devalued, and the tenant has satisfied elements 1 and 2 in the test for damages. I am not satisfied that the tenant is entitled to recovery of all the rent paid for the period of mid-December, 2016 to mid-January, 2017. I find that the tenant has established a claim for half a month's rent for devaluation of the tenancy, or \$450.00.

I also find that the tenant had cause to end the tenancy due to the landlord's failure to provide adequate heat within a reasonable time, and the tenant has established a claim for moving expenses in the amount of \$900.00.

With respect to the landlord's claim for unpaid rent, the *Residential Tenancy Act* states that a tenant must give at least 1 month's written notice to end a tenancy, and must be given the day before rent is payable:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45 also states that:

3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice.

In this case, the tenant gave written notice on January 3, 2017 to vacate the rental unit “as of mid-January” and has provided a copy for this hearing, but I find that it is not effective because it does not comply with Section 52; it is not signed by the tenant and does not mention the address of the rental unit or give an effective date. Further, the tenant testified that she paid rent to January 15, 2017, and the landlord did not dispute that. Therefore, I find that the landlord has established the claim for unpaid rent of \$450.00 for the balance of January. Having found that the tenant was justified in ending the tenancy, I also find that the landlord is not entitled to rent for February, 2017.

The *Residential Tenancy Act* provides for recovery of a filing fee for the cost of making an application, but not for costs for serving documents or for preparation for a hearing. Therefore, the landlord’s claim of \$26.30 for office supplies and postage is dismissed.

Having found that the landlord has established a claim of \$450.00 and the tenant has established a claim of \$1,350.00, I set off those amounts and I grant a monetary order in favour of the tenant for the difference in the amount of \$900.00.

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

Conclusion

For the reasons set out above, the tenant's application for a monetary order for return of all or part of the pet damage deposit or security deposit is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$900.00.

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: April 05, 2017

Residential Tenancy Branch