



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision Codes: FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$1727.58
- b. An order for the return of all or part of the security deposit
- c. An order to recover the cost of the filing fee.

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$2059 unpaid hydro, furnace oil and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on February 6, 2017. The landlord refused to accept the registered mail package. The documents were served in person on April 2, 2017. I find that the Application for Dispute Resolution filed by the landlord was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on June 8, 2017.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a tenancy agreement that provided that the tenancy would start on March 1, 2015 with a rent of \$800 per month. The rent was increased to \$827.58 commencing November 1, 2016. The tenant paid a security deposit of \$400 at the start of the tenancy.

The landlord served a 2 month Notice to End Tenancy on the Tenant at the end of October that set the end of tenancy for December 31, 2016. The tenant paid the rent for November. On November 15, 2016 the tenant gave the landlord written notice that she would be vacating the rental unit on November 30, 2016. She also gave the landlord with her forwarding address in writing at that time.

The tenant(s) vacated the rental unit by November 30, 2017.

Tenant's Application

SECTION 51 OF THE RESIDENTIAL TENANCY ACT:

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

I determine the tenant is entitled to the equivalent of one month rent or the sum of \$827.58. The landlord served a 2 month Notice to End Tenancy. The tenant accepted the Notice and moved out at the end of November after giving the landlord 10 days notice as she is entitled to do. The Act provides that the tenant is entitled to the equivalent of one month rent.

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

The landlord filed a claim to on November 24, 2016 including a claim to retain the security deposit. At the hearing on January 9, 2017 the landlord decided to withdraw her application after the arbitrator denied her request to permit her to amend her application to increase her claim. The arbitrator granted the landlord leave to re-apply and stated "Any future hearing will take into account the fact that this application, made in good faith by the landlord on November 24, 2016, included a claim against the security deposit." I take this to mean that the arbitrator had determined the landlord had complied with the provisions of section 38 by applying for arbitration within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing thus preventing the tenant from claiming double the deposit.

I determined the tenancy ended on November 30, 2016. I further determined the tenant provided the landlord with her forwarding address in writing on November 15, 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants. I determined the tenant has established a claim against the landlord for the return of the security deposit in the sum of \$400 but not double the security deposit. .

In summary I determined the tenant has established a claim against the sum of the sum of 1227.58 plus \$100 for the cost of the filing fee for a total of \$1327.58.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I dismissed the landlord's claim of \$412.75 for the cost of furnace oil. The tenant testified she never used the furnace oil. The landlord failed to prove the tenant used furnace oil.
- b. The landlord claimed the sum of \$831 for the cost of hydro. The landlord prepared an accounting. However, the electricity to the tenant's rental unit was on the same meter that included the electricity to the barn. The landlord failed to produce any bills for the hydro. .

The tenant acknowledged she was responsible for paying the electricity to the rental unit and that she used electricity for her heat.. She testified that the landlord told her she would deduct \$50 per month from the electricity in compensation for the tenant being unable to access cable and the internet. She made six payments including a payment of \$70 in January 2016 and \$100 on July 5, 2016. The landlord disputed this testimony saying the tenant only made the 2 payments referred to above. The tenant testified she was not able to look at the meter as the landlord had aggressive dogs in that area. The submitted the landlord failed to prove this claim.

The evidence provided by the landlord was poor. However, the tenant acknowledged responsibility for paying a portion of the hydro. She made a payment of \$100 which she says was the amount requested by the landlord for hydro to July 5, 2016.

I determined the landlord failed to prove the amount claimed. However, I am satisfied some money is owed. The calculations of the landlord confirm a \$50 deduction for each bill. It indicates that the tenant does not owe for summer months. I am satisfied the tenant owes \$39.62 to October 1, 2017 and a further \$128.89 to November 30, 2017 for a total of \$168.51. I determined the landlord failed to prove the tenant owes for hydro for the period prior to July 5, 2016.

- c. The landlord claimed \$701.40 for the cost of fixing the skirting to the manufactured home caused the tenant's dogs. The tenants disputed this claim saying any damage to the skirting was pre-existing. The landlord produced a quotation from a contractor. She testified she paid this sum although she failed to present evidence to prove payment. The contractor did not attend the hearing or give evidence as to precisely what work was done. The tenant testified she had to patch a hole in the skirting to prevent her dogs from going under the manufactured home where the landlord had placed rat poison. I determined the landlord is entitled to nominal damages of \$50 for this claim.
- d. The landlord claimed \$315 for the cost of repair damage to the lawn. The landlord relies on a quotation. However, the landlord did not hire the contractor deciding to do the work herself. The tenant disputes this claim saying the damage was not caused by her dogs but was caused by the landlord's donkey. I determined tenant's dogs caused damage. However, the landlord is entitled to nominal damage of \$50 as the landlord failed to prove quantum of loss.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$268.51 plus the \$100 filing fee for a total of \$368.51.

Monetary Order:

I determined the tenant has established a monetary claim against the landlord in the sum of \$1327.58. I determined the landlord has established a claim against the tenant in the sum of

\$368.51. After setting off one claim against that of the other I ordered that the landlord pay to the Tenant the sum of \$959.07.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 17, 2017

Residential Tenancy Branch