



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD
 MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order and retention of the security deposit for unpaid rent, damage or loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for money owed for utilities paid and double the amount of his security deposit.

The hearing was convened by telephone conference call and was attended by the Landlord, the Tenant and two witnesses for the Tenant, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in the hearing in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); However, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in his favor will be mailed to him at the address provided in the hearing. At the request of the Landlord, copies of the decision and any orders issued in his favor will be e-mailed to him at the e-mail address provided in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order and retention of the security deposit for unpaid rent, damage or loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee?

Is the Tenant entitled to a Monetary Order for money owed for utilities paid and double the amount of his security deposit?

Background and Evidence

Although the Landlord testified that they never intended to enter into the tenancy agreement as written, ultimately both parties agreed that a tenancy agreement was signed on September 23, 2018, that the tenancy began on October 1, 2015, that rent in the amount of \$850.00 was due on the 15th day of each month and that a security deposit in the amount of \$425.00 was paid, which the Landlord still holds.

Although both parties agreed that their understanding at the time the tenancy agreement was entered into was that the \$850.00 in rent did not include such utilities as heat and electricity, the written tenancy agreement in the documentary evidence before me states that heat and electricity are included in the cost of rent. The Landlord stated that this was a clerical error and both parties agreed that they did not notice this at the time the tenancy agreement was signed as they were outside in the dark and the rain. The Tenant stated that he never received a copy of the tenancy agreement during the tenancy and therefore paid for his own heat and electricity. However, the Tenant stated that when he received the Landlord's evidence in relation to this hearing, he discovered that heat and electricity were supposed to be included in the rent and is therefore seeking \$1,702.54 for the cost of electricity and \$4,229.55 for the cost of wood stove pellets paid for by him over the course of the tenancy.

In support of his claim he submitted the electric bill history over the course of the tenancy as well as quotes for the cost of wood stove pellets and an estimation of the amount used by him over the course of the tenancy. The Landlord disputed that the Tenant is entitled to these costs as the understanding was always that he was to pay for his own heat and electricity.

Both parties agreed that the tenancy ended on August 6, 2017, as the result of an Order of Possession obtained by the Landlord in relation to a One Month Notice to End

Tenancy for cause (the "One Month Notice"). Both parties also agreed that the Tenant owes the Landlord rent for August 1-6, 2017; however, the parties disagreed about the amount owed.

The parties agreed that a condition inspection was not completed at the start of the tenancy. Although the Landlord stated that the Tenant did not attend the move-out condition inspection and it was therefore completed in his absence, the Tenant testified that he was never provided with two opportunities to attend the move-out inspection as required by the *Act*. The parties and the witnesses provided opposing testimony about the condition of the rental property at both the start and the end of the tenancy. The Landlord testified that the rental unit and property were damaged and unclean at the end of the tenancy, and that a boat was left on the property which the Landlord was required to store. As a result, the Landlord sought \$390.00 for garbage disposal, \$50.00 for repairs, \$800.00 for yard cleaning, \$538.20 for cleaning of the rental unit, \$1,160.00 for deck repairs, and \$368.00 for boat storage. In support of his testimony the Landlord submitted several photographs of the deck, receipts for the \$50.00 in repairs and the house and yard cleaning, an unsigned move-in condition report dated August 7, 2017, an unsigned move-out condition report, and a notice of final opportunity to schedule a condition inspection.

The Tenant and his witness M.H. testified that the rental property was unclean at the start of the tenancy and that a boat, a fire pit, and some building materials were already on the property at the time the tenancy began. The Tenant and his witness M.A. testified that the property was clean and undamaged except for reasonable wear and tear at the end of the tenancy and submitted photographs of the property and the rental unit. The Tenant also submitted several character references and a letter from a neighbour regarding the boat. Based on the above, the Tenant stated that he is not responsible for the above noted costs sought by the Landlord.

Further to this, the Landlord stated that after the One Month Notice was served, which had a vacancy date of June 30, 2017, he signed a new tenancy agreement with a new tenant to move into the rental until on July 1, 2017. As a result, the Landlord sought \$1,250.00 for the cost of rent and storage costs incurred by a new occupant between as they were unable to move in as scheduled on July 1, 2018.

Both parties also agreed that the Landlord received the Tenant's forwarding address in writing on October 2, 2017.

Analysis

The parties and their witnesses provided equally compelling yet contradictory testimony regarding the state of the rental unit and property at the start and the end of the tenancy. Further to this, although the Landlord provided several photographs of the deck at the start and the end of the tenancy, the photograph from the start of the tenancy is taken from such an angle that the areas of the deck in which the Landlord states were damaged cannot be adequately seen as they are covered by water. Although an unsigned move-in condition inspection report was submitted by the Landlord, it appears to have been completed after-the-fact at the end of the tenancy as it is dated August 7, 2017, and unsigned by either party. Further to this, the parties were in agreement that a condition inspection was not completed at the start of the tenancy.

Based on the above, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that he is entitled to any compensation for garbage removal, repairs, cleaning of the yard and the rental unit and I therefore dismiss these claims without leave to reapply.

The Landlord sought \$368.00 for the cost of a boat storage, however, no evidence was submitted by the Landlord to corroborate that the boat belongs to the Tenant and the Tenant testified that it is not his and was in fact already on the property at the time he moved in. As a result, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the boat was the Tenant's property or responsibility and I therefore dismiss his claim for this cost without leave to reapply.

The Landlord stated that he was granted a two day Order of Possession by the Residential Tenancy Branch in relation a One Month Notice to End Tenancy for Cause (the "One Month Notice") and provided a copy of the decision and the Order of Possession for my consideration. The Landlord testified that the two day Order of Possession was served on the Tenant on July 28, 2018, and neither the Tenant nor his witnesses disputed this testimony. As a result, I find that the Tenant was served with the Two Day Order of Possession on July 28, 2018, and that he was therefore required to vacate the rental unit on July 30, 2018.

Although both parties agreed that rent was paid in full for July 2018, and that rent was owed for August 1-6, 2018, they disagreed on the amount of rent owed for this time period. As the parties agreed that rent was \$850.00 per month and August had 31 days, I therefore find that the Tenant owes the Landlord \$164.52 in rent for August 2018 (6 days at \$27.42 per day).

The Landlord stated that as a result of the Tenant's failure to move out in accordance with the One Month Notice, which has an effective date of June 30, 2017, the new occupant was unable to move into the rental unit as scheduled on July 1, 2017. As a result, the Landlord sought \$1,250.00 for the cost of rent and storage costs incurred by the new tenant. However, the Landlord did not provide any documentary evidence to corroborate that these costs were incurred by the new tenant or that compensation in this amount was paid or given to the new tenant by the Landlord. Further to this, I find that the Landlord failed to mitigate his loss by re-renting the unit for July 1, 2017, even though the Tenant sought cancellation of the One Month Notice with the Branch. Based on the above, I am not satisfied that the Landlord is entitled to these costs and I therefore dismiss this claim without leave to reapply. As the Landlord was largely unsuccessful in his Application, I decline to grant him recovery of the filing fee.

Having made the above findings, I will now turn my mind to the Tenant's claims. Both parties agreed that the Landlord received the Tenant's forwarding address in writing on October 2, 2018. Based on the above, and given that there is no evidence before me that the Landlord had either the Tenant's permission or authority from the Branch to withhold any portion of the security deposit, I find, pursuant to section 38(1) of the *Act*, that the Landlord had until October 17, 2018, to either return the security deposit to the Tenant in full or file a claim against it. Section 38(6) of the *Act* states that if a Landlord fails to comply with section 38(1), they must pay the Tenant double the amount of the security deposit. As the Landlord did not file their claim until October 18, 2018, and did not return the security deposit to the Tenant, I find that the Tenant is entitled to \$850.00, double the amount of his \$425.00 security deposit.

Although the Tenant sought compensation in the amount of \$5,932.09 for the costs of heat and electricity paid over the course of the tenancy, both parties agreed that their understanding at the time the tenancy agreement was entered into was that the Tenant was responsible to pay utilities. Further to this, the Tenant acknowledged that he paid these utilities himself over the course of the entire tenancy. Although I agree that the written tenancy agreement states that the \$850.00 in rent includes water, electricity, and heat; based on the testimony of both parties, I find that the inclusion of utilities in the cost of rent in the written tenancy agreement is actually a mutual mistake as neither party intended or understood this to be the case. As a result, I find that the parties simply failed to notice the error in the written contract at the time it was signed and that the inclusion of the cost of utilities such as heat and electricity in rent is therefor of no force or effect.

Based on the above, I therefore dismiss the Tenant's claim for \$5,932.09 for the cost of heat and electricity paid over the course of the tenancy without leave to reapply. As both parties were largely unsuccessful in their Applications, I decline to grant either party recovery of the filing fee.

Policy Guideline #12 states that where both parties file applications in relation to the security deposit, the arbitrator will order the return of a security deposit, or any balance remaining, less any deductions permitted under the *Act*, to the Tenant. As a result, I find that the Tenant is entitled to a Monetary Order in the amount of \$685.48; \$850.00 for double the amount of the security deposit, less the \$164.52 owed in rent for August of 2017.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$685.48. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: June 21, 2018

Residential Tenancy Branch