Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This decision pertains to the tenant's application for dispute resolution made on June 19, 2018, under the *Residential Tenancy Act* (the "Act"). The tenant seeks the following relief under sections 38(1)(c), 67, and 72(1) of the Act:

1. a monetary order for compensation for the refund of a hydro payment;
2. a monetary order for the return of her security and pet damage deposits; and,
3. a monetary order for recovery of the filing fee.

This is my decision in respect of the tenant's application.

A dispute resolution hearing was convened on October 4, 2018 and the tenant and the landlord attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents. I note that the landlord provided the correct spelling of his name, which is reflected in this Decision.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Is the tenant entitled to a monetary order for compensation for the refund of a hydro payment?
2. Is the tenant entitled to a monetary order for the return of her security and pet damage deposits?
3. Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The tenant testified that the tenancy commenced on May 1, 2017 and ended on February 28, 2018. Monthly rent was $1,150.00, due on the first of the month. The tenant paid a security deposit of $575.00 and a pet damage deposit of $575.00. Rent included water, sewer, electricity, and heat, among other services and facilities. A copy of the written tenancy agreement was submitted into evidence.

After the tenancy ended, the tenant sent her forwarding address to the landlord by registered mail on March 12, 2018. The landlord attempted to return, by way of e-transfer, a portion of the security and pet damage deposits (in the amount of $825.90) to the tenant but deducted a portion ($324.10) for additional hydro costs that the tenant had incurred whilst living in the rental unit. The tenant refused to accept the e-transfer, which the landlord testified he sent on March 3, 2018 and March 5, 2018.

Regarding the hydro, while the electricity and heat were included in the rent, the tenant acquired an electrical heater in order to warm the basement rental unit, and in conversations with the landlord, initially agreed to pay extra for the extra electricity that would be consumed in the operation of this heater. However, after the tenant spoke with staff at the Residential Tenancy Branch, she believed that she was ultimately not under an obligation to pay for the extra electricity.

The landlord testified that the rental unit is in a new home, which is only about five years old, and that the central heating adequately heats the house. He was amendable to the tenant using an electrical heater and was accepting of the tenant paying extra for the electricity. Regarding the extra electricity used, he noted that the cost almost doubled in the tenant's last month of tenancy over the same period the previous year.

In regard to the fact that electricity is included in the rent, the landlord testified that yes, "electricity is included, but not [for] the heater." Further, he testified that he and the tenant made an agreement that she pay for the extra hydro.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38(1) of the Act reads as follows:

> Except as provided in subsection (3) of (4) (a), within 15 days after the later of
> (a) the date the tenancy ends,
> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord may not make a claim against the security or pet damage deposits and must pay the tenant double the amount of the security and pet damage deposits.

In this case, the tenant provided her forwarding address to the landlord on March 12, 2018. Pursuant to section 90(a) of the Act, the landlord is deemed to have received the forwarding address on the fifth day after it was mailed, namely, on March 17, 2018.

According to the landlord, he attempted to refund a portion of the security and pet damage deposit in the amount of $825.90 on March 3 and March 5, 2018. The tenant refused to accept the partial refund, thinking that she did not have to accept this, but rather, that she was entitled to the full amount all at once.

There is no documentary evidence for me to find that the parties agreed to the landlord deducting any amount from the tenant's security and pet damage deposits, nor is there any evidence for me to find that the landlord applied within 15 days after receiving the tenant's forwarding address for dispute resolution claiming against the deposits.

Given the above, I find that the landlord failed to comply with section 38(1) of the Act, but only in respect of the deducted amount of $324.10. The landlord complied with the Act in respect of the remaining amount, and the tenant cannot claim a benefit from the operation of section 38(6) by virtue of having refused to accept the repayment of $825.90. Therefore, while I double the amount of $324.10 not returned or claimed in compliance with sections 38(1) and 38(6) of the Act, I do not double the amount of $825.90 that the landlord attempted to return.
As such, I grant the tenant a monetary award of $1,474.10. (Calculated as follows: $324.10 x 2 + $825.90 = $1,474.10.)

In respect of the tenant's claim for compensation for reimbursement of the hydro, I find that the landlord was not permitted under either the Act or the tenancy agreement to accept this payment. While the parties may have, at one point, verbally agreed to the tenant paying for extra electricity, this agreement is of no force or effect, or legally enforceable.

On the tenancy agreement, section 1 (page 2), it states that "Any change or addition to this tenancy agreement must be agreed to in writing an initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable."

The tenancy agreement further states that electricity is included in the rent. It does not, as the landlord argued, make an exception for electric heaters; there is nothing in the tenancy agreement or any addendum that refers to this exception. While the tenant's use of such a heater resulting in a substantially higher hydro bill is unfortunate from the financial perspective of the landlord, it is the landlord who is responsible for drafting the terms of a tenancy agreement.

Further, while the landlord testified that the house has efficient central heating, that the tenant found it necessary to use a heater demonstrates that perhaps the basement rental unit was not sufficiently heated. It is not uncommon for basement rental units to be colder than the upper levels of a home, and a landlord who rents such rental units ought to be aware of the possibility of tenants using additional heaters.

Taking into consideration all the evidence and the testimony of the parties presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim for reimbursement of the $224.84 paid toward hydro. Rent included hydro, and the tenant was under no legal obligation to pay for "extra" hydro. As such, I grant the tenant a monetary award in the amount of $224.84 in respect of this claim.

Finally, as the tenant was successful in her application, I grant her a monetary award in the amount of $100.00 for recovery of the filing fee.

Conclusion

I hereby grant the tenant a monetary order in the amount of $1,798.94. The tenant must serve this order on the landlord, and the order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is final and binding on the parties and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1 of the Act.

Dated: October 4, 2018

Residential Tenancy Branch