Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, MNSD, RPP

Introduction
This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the "*Act*") for monetary compensation for money paid towards utilities, monetary compensation for emergency repairs completed, the return of the security deposit and pet damage deposit, and for an Order for the Landlord to return personal property.

The Tenant and both Landlords were present for the duration of the teleconference hearing. The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and copies of the Tenant's evidence. The Tenant confirmed receipt of a copy of the Landlord's evidence. Neither party brought forward any concerns regarding service. Therefore, I find that the parties were duly served in accordance with Sections 88 and 89 of the *Act.*

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided
Is the Tenant entitled to monetary compensation for money paid towards utilities?

Is the Tenant entitled to monetary compensation for money paid towards emergency repairs?

Is the Tenant entitled to the return of the security deposit?

Should the Landlords be ordered to return the Tenant's personal property?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on March 1, 2016. Monthly rent was initially set at $2,900.00 plus 70% of utilities. A security deposit of $1,450.00 and a pet damage deposit of $1,450.00 was paid at the outset of the tenancy.

The tenancy agreement was submitted into evidence and confirms the details as stated by the parties. The original tenancy agreement was for a fixed term of one year, set to end on February 28, 2017. The tenancy agreement named and was signed by two tenants which included the applicant (CG) and a co-tenant (BM).

The Landlord provided testimony that on May 30, 2016 a renewal to the tenancy agreement was signed to extend the fixed term for an additional year. The monthly rent was to remain the same, while the utilities charges were amended from 70% to 55%.

The tenancy agreement renewal, dated May 30, 2016, was submitted into evidence and states that the agreement is extended from March 1, 2017 to February 28, 2018. The renewal also confirms the change in the Tenants' responsibility for utilities from 70% to 55%.

The Tenant has applied for the return of double her security deposit and pet damage deposit for a total amount of $5,800.00. She provided testimony that she paid the deposits at the start of the tenancy herself and that they were not paid by the co-tenant. She stated that she did not provide permission for the Landlords to withhold any amount from the deposits and that she also did not provide her co-tenant with permission to act on her behalf.

The Landlord submitted into evidence the Condition Inspection Report at move-out dated February 14, 2018. The report was signed by the Landlord and the co-tenant. On the move-out report, the co-tenant signed in agreement to the Landlord retaining the full amount of the security deposit and pet damage deposit towards damages.

A letter, dated February 14, 2018, was also submitted into evidence by the Landlords. The letter is signed by the co-tenant and states his agreement to the Landlords retaining both deposits. The letter states in part the following:

> 'I agree to forfeit my security and pet deposit $2900.00 for damages to the house and utilities owed and rent for February. I acknowledge I (illegible) further motive and this amount can help offset some of the loss. I further confirm we have no

claim for emergency repairs, or any monetary loss or money owed. All repairs were completed during the tenancy.' (Reproduced as written)

The Landlord submitted a number of photos to show damage in the rental unit and stated that the co-tenant agreed to the forfeiture of the deposits as compensation towards the damage. The Landlord also submitted some receipts for repairs completed in the rental unit after the tenancy ended.

The parties were in agreement that the original tenancy agreement was signed by both the Tenant and the co-tenant who signed the Condition Inspection Report.

The Landlords provided testimony that the Tenant was aware of the time for the move-out inspection as stated on a mutual agreement written by the Tenant's lawyer. The mutual agreement, dated February 9, 2018, states that the Tenants will vacate the property by midnight on February 12, 2018 and that the move-out inspection will be conducted on February 13, 2018 at 10:00 am. The mutual agreement was not signed, but the Landlords noted that both Tenants were on the email from their lawyer regarding the mutual agreement.

The Landlord stated that they attended the rental unit at 10:00 am on February 13, 2018 and waited until 3:00 pm. As the Tenant did not show up, they made arrangements to meet with the co-tenant the next day to complete the inspection.

The Tenant provided testimony that on February 13, 2018, the Landlords changed the locks and she no longer had access to the rental unit. She stated that the Landlords arranged the move-out inspection with the co-tenant without providing her an opportunity to participate.

The Tenant has claimed for monetary compensation in the amount of $5,003.07 for the recovery of money paid towards hydro and gas bills. The Tenant stated that at the start of the tenancy she was under the impression that there was only one other rental unit in the home. The utilities for hydro and gas were put into the Tenant's name, and the Tenant later found out that there were four rental units on the rental property with many people living in each of the other rental units.

However, the Tenant stated that the utility bills were more expensive than expected. After speaking to the Landlord about her concerns, the Tenant stated that she was given the option of signing a new agreement for 55% of the utilities or moving out.

Despite asking, the Tenant stated that she never received information with a breakdown of the utility amount paid by each rental unit or a copy of the other utility bills.

A letter dated October 16, 2017 was submitted into evidence in which the Tenant asked the Landlords to put utilities in their name instead of hers. The letter also asked for reimbursement for the gas, hydro and water bills paid by the Tenants.

The Tenant testified that the amount she claimed, $5,003.07, is the total amount of hydro and gas bills paid by her over the tenancy. The Tenant submitted an invoice summary from BC Hydro for the period of March 1, 2016 to February 28, 2017, stating an amount of $2,807.32. The Tenant also submitted a summary for the period of April 5, 2016 to June 5, 2017 for an amount of $1,784.23. A statement was submitted showing a credit of $494.00 towards hydro as of December 27, 2017. The Tenant did not provide further explanation as to how she calculated the total amount claimed.

The Landlords provided testimony that the Tenant did not pay 100% of the utilities, but instead paid 70%, with the downstairs tenants responsible for the remaining 30%. They stated that the Tenant had requested the bills to be in her name at the start of the tenancy. The Tenant approached them about changing the utility amount to 50%, but in May 2016 they came to an agreement to change the amount to 55%.

The Landlords testified that the Tenant was to pay the hydro and gas bills, and then the Landlords would calculate what percentage was owed by each unit. The Landlords submitted that they paid the water, sewer and garbage bills, which the Tenant did not pay anything towards. The Landlord stated that they worked out the calculations and the Tenants still owed them money for the remainder of the utility bills that they paid for the property.

After the Landlord received the Tenant’s letter requesting to remove her name off the hydro and gas bills, they switched these utilities into their name for December 2017, January 2018 and February 2018. They submitted that the Tenant did not pay any money towards any of the utility bills during this period. They also stated that during this time they provided the Tenant with a 30-day demand letter to pay the utilities owing.

The Tenant has also applied for monetary compensation for emergency repairs in the amount of $315.00. She provided testimony that when repairs were needed, she would contact the Landlords who told her she would be reimbursed for the repairs that she completed.

The Tenant stated that the closet door was broken twice during the time she lived at the rental unit, so she had to purchase a new rod. She also submitted that she purchased supplies to repair the toilet, as well as the dishwasher after the water flooded onto the floor. The Tenant stated that the Landlords told her to go ahead with fixing the dishwasher and they would reimburse her when they were back in town.

During the tenancy, the lattice fencing that was covering the garbage bins broke, so the Tenant paid to have this repaired. The Tenant testified that she has not been paid back for any of the repairs she made.

The Tenant submitted into evidence a receipt for $61.49 for the lattice repair, an invoice for dishwasher repair in which the amount charged is not legible, a receipt for $30.20 which states that it is for laundry room light bulbs and tape for a door, a receipt for the toilet repair which is not legible, and a receipt for $65.08 for repair of the closet door.

The Landlords provided testimony that the co-tenant's letter dated February 14, 2018 states that there are no outstanding monetary claims from the Tenants. They stated that the Tenant caused damage to the rental unit that was beyond the amount of the deposits that were kept. They also submitted that they had paid to fix the toilet and completed other repairs on the property during the tenancy.

The final claim of the Tenant is for an Order for the Landlords to return her personal property. The Tenant stated that over $1,000.00 worth of belongings were not returned to her after they were left in the rental unit and the Landlords changed the locks.

The Tenant submitted that she did not abandon the rental unit, but instead that the locks were changed, and she was denied access to move the remainder of her belongings out of the rental unit. The Tenant included an undated text message exchange with the Landlords into evidence.

In the text messages, the Tenant states that her new home is not available until February 15, 2018, so she needs until then to finish moving. She also stated the challenges with getting the remainder of her belongings due to the weather conditions at the time.

Through text, the Landlords responded that the Tenant had until noon to access the rental unit through the co-tenant who still had access and to collect her belongings. They noted that the Tenant abandoned the unit and left the doors open, which the Tenant denied.

The Tenant testified that the items that were not returned to her included an office chair, computer, bedding, and books. She had planned on moving out on February 28, 2018 but was unable to access the rental unit after February 14, 2018 as the locks were changed. She stated she was not able to communicate with the co-tenant regarding access to the home due to conflict between them.

The Landlords stated that the Tenant had no respect for their mutual agreement regarding the move-out date and that she abandoned the rental unit on February 13, 2018; leaving the doors unlocked and open. They stated that there were many items left in the home that the co-tenant moved to the garage on February 14, 2018.

When the Tenant did not get her belongings, the Landlords stated that they left the items available for the Tenant to access for 10 days, and then sent the belongings to storage. The Landlords submitted that the storage company has the Tenant's contact information and has tried contacting her numerous times, with no response.

The storage company used by the Landlords was the same storage company that the Tenant had hired for moving. The Landlords stated that the items left in the home are valued at less than $500.00 which they noted was confirmed by 5 people. The Landlord submitted a photo of the co-tenant moving the items to the garage, as well as photos of the items in the garage.

The Tenant stated that she had one message from the Landlord and the storage company regarding her belongings but has not heard anything else since and has not been in contact with them.

The Landlord submitted into evidence an email from another tenant in the rental property confirming that they found the doors to the rental unit left open on February 13, 2018. A second letter, from another tenant who resides on the property, stated that he witnessed one of the Landlords taking pictures of the items left in the garage on February 21, 2018.

A third letter, from the co-tenant, confirms the value of the items at less than $500.00. Lastly, a letter from the storage company confirmed that they have the items and that their estimated value is less than $500.00. The letter further confirms that the storage company has tried to contact the Tenant to collect her belongings but has not heard back.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows regarding each of the claims of the Tenant:

Security deposit and pet damage deposit: For the Tenant's claim regarding the return of the security deposit and pet damage deposit, I accept the documentary evidence before me that shows that the co-tenant provided permission in writing for the Landlords to withhold the full amount of both deposits. This permission was provided on the Condition Inspection Report at move-out dated February 14, 2018.

Section 38(4)(a) states that a landlord may retain an amount from a security deposit or pet damage deposit that a tenant has agreed to in writing. As the co-tenant agreed in writing to the $1,450.00 security deposit and $1,450.00 pet damage deposit being retained by the Landlords, I find that they were within their rights under the *Act* to retain the full amounts of both deposits.

I also refer to *Residential Tenancy Policy Guideline 13: Rights and Responsibilities of Co-Tenants,* which defines co-tenants as the following: 'Co-tenants are two or more tenants who rent the same property under the same tenancy agreement.' *Policy Guideline 13* further states that co-tenants are jointly and severally liable, meaning that one or both tenants may take responsibility or actions as required by the tenancy agreement or *Act.*

As the tenancy agreement states that there were two tenants, which was confirmed through the testimony of both parties, I find that the co-tenant signed the Condition Inspection Report on behalf of both parties. Any disputes over who paid the initial deposits or any disagreements as to the amounts agreed upon are between the two tenants, not between the Landlord and Tenant.

Therefore, I decline to award the return of the security deposit or pet damage deposit, as I find that they were dealt with at the end of the tenancy in accordance with the *Act*.

Compensation for emergency repairs: The Tenant applied for compensation in the amount of $315.00 for emergency repairs completed during the tenancy.

I refer to Section 33 of the *Act* which defines emergency repairs as the following:

> 33 (1) In this section, **"emergency repairs"** means repairs that are
> (a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
(c) made for the purpose of repairing
(i) major leaks in pipes or the roof,
(ii) damaged or blocked water or sewer pipes or plumbing fixtures,
(iii) the primary heating system,
(iv) damaged or defective locks that give access to a rental unit,
(v) the electrical systems, or
(vi) in prescribed circumstances, a rental unit or residential property.

I do not find sufficient evidence before me to establish that the repairs completed by the Tenant were emergency repairs as defined in Section 33(1) of the *Act*.

Section 33(3) of the *Act* outlines a process for the completion of emergency repairs as follows:

(3) A tenant may have emergency repairs made only when all of the following conditions are met:
(a) emergency repairs are needed;
(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Although the Tenant provided testimony that the Landlords had told her to go ahead with the repairs and that they would reimburse her, the Landlords were not in agreement as to what occurred. When parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence to establish what occurred, over and above their verbal testimony.

As this is the Tenant's claim, in accordance with Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure,* the Tenant has the onus to prove her claim, on a balance of probabilities.

The Tenant provided verbal testimony regarding what repairs were completed during the tenancy and submitted some receipts and invoices. However, I do not find that any

of the repairs the Tenant testified to were emergency repairs. Furthermore, the tenant has provided no documentary evidence to establish that the Landlords had been aware of these repairs, or that they agreed to reimburse the Tenants. A landlord has a duty to repair and maintain the rental unit as stated in Section 32 of the *Act* but must be made aware of any repairs needed.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the testimony and evidence of both parties, I cannot confirm that the Landlords breached the *Act* by not following through on their duties to repair or maintain the rental unit in accordance with Sections 32 and 33 of the *Act.* As such, I find that the Tenant has not met the burden of proof outlined in the four-part test to establish that a breach of the *Act* occurred and that compensation is due as a result. Therefore, I decline to award any compensation for emergency repairs.

Compensation for utilities: The Tenant has claimed compensation for hydro and gas paid during her tenancy in the amount of $5,003.07. She stated that she should not have been responsible for the entire hydro and gas bills and is seeking compensation.

I refer to *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* which states that it may be unconscionable for a tenancy agreement to require a tenant to put utilities in their name regarding utilities for units which they don't occupy.

The parties agreed that this was a multi-unit rental property. However, the Landlord provided verbal testimony that the Tenant wanted the hydro and gas bills in her name. When she requested to have the accounts out of her name, the Landlord stated that they responded to this request for December 2017, January 2018 and February 2018.

Upon review of the tenancy agreement submitted into evidence, I do not find a term that required the Tenant to put the utilities in her name. The tenancy agreement addendum states that the Tenant is responsible for 70% of the utility bills for hydro, gas, water,

sewer and garbage collection. The Landlord stated that they paid for water, sewer and garbage collection, while the Tenant paid for the hydro and gas bills.

Again, I refer to the four-part test for compensation. With the application of this test, I find that the Tenant has not proven the Landlords' breach of the *Act, Regulation*, or tenancy agreement or the value of her loss. While the Tenant claimed for reimbursement of 100% of the hydro and gas bill paid during the tenancy, I find that she agreed to pay 70% of the utility bills at the start of the tenancy, and later agreed to pay 55%. In the absence of the remainder of the utility bills, or calculations regarding how the remainder of the utility bills were divided, I am not able to confirm that the Tenant paid more than 70% or 55% of the utilities during her tenancy.

Therefore, I am not satisfied that the Tenant met the burden of proof to establish that she is owed compensation for the hydro and gas bills. I decline to award any compensation for utility bills.

Return of personal property: I refer to Section 24 of the *Regulation* which states the following:

> 24 (1) A landlord may consider that a tenant has abandoned personal property if
>
> (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
>
> (b) subject to subsection (2), the tenant leaves the personal property on residential property
>
> (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
>
> (ii) from which the tenant has removed substantially all of his or her personal property.

I find documentary evidence before me that a move-out Condition Inspection was conducted on February 14, 2018, with the keys being returned to the Landlords by the co-tenant. As such, I find that the tenancy ended on this day.

The text messages submitted into evidence confirm that the Tenant was notified that there were still items in the home and that they could be picked up. The Landlords also provided verbal testimony that they notified the Tenant that her belongings were

available for her to claim for 10 days after the tenancy. As the items remained in the rental unit up to 10 days after the tenancy ended, I find that it was reasonable that the Landlords considered the Tenant's belongings abandoned.

The parties were not in agreement as to whether the Tenant was aware of the location of her belongings. However, the Tenant acknowledged that she had been contacted by the storage company one time. I also accept the letter from the storage company submitted into evidence by the Landlords which confirms that the Tenant's belongings are with this company and that they have contacted the Tenant to collect her belongings.

I also note that in accordance with Section 25 of the *Regulation,* a process is in place for storage of any abandoned property. However, this Section also notes that storage is not required if the items are valued at less than $500.00.

The Landlords provided a statement from the storage company confirming the value of the items at less than $500.00 although they chose to store the items regardless.

I do not find sufficient documentary evidence from the Tenant to determine that the value of the items was more than $500.00, or that the Landlords have not provided opportunity for the Tenant to collect her belongings. As such, I find that no order is required for the return of the items and instead the Tenant may make arrangements with the storage company directly to access her belongings.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed in its entirety, without leave to reapply.

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: November 22, 2018

Residential Tenancy Branch