



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD FF / MNSD

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for unpaid rent and/or utilities pursuant to section 67;
- a monetary order for compensation for loss and/or damage pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenants:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The parties confirmed service of the respective applications and evidence on file.

Issues

Is the landlord entitled to a monetary award for unpaid utilities and compensation for loss and/or damage?

Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a return of all or a portion of the security deposit?

Background & Evidence

The tenancy began on October 1, 2018 with a monthly rent of \$1500.00 payable on the 1st day of each month. The tenant was also responsible of 50% of utilities. The tenant occupied the upper portion of the home and the lower portion was occupied by another tenant. The tenancy ended on March 31, 2019. The tenant paid a security deposit of \$750.00 at the start of the tenancy which the landlord continues to hold.

Move-in and move-out condition inspection reports were not completed. The landlord advised that she normally does not complete a written inspection report and only does a verbal walk through. The tenant did not provide a forwarding address to the landlord. The tenant filed her application on April 16, 2019 and the landlord subsequently filed on June 18, 2019.

The landlord is claiming as follows:

- \$196.79 in unpaid gas and electric bills. This claim was not disputed by the tenant.
- \$145.95 for a fireplace tune-up. The landlord testified the tenant requested the tune-up before using the fireplace when the main furnace was not working.
- \$194.34 for paint supplies and for an estimate to paint the patio. The landlord testified the patio was damaged with oil stains that would not come out.
- \$220.00 for labour required to clean and scrub the patio, removal of garbage, cleaning window sills, cleaning the oven and sweeping the driveway.
- \$20.00 for postage paid to serve application papers.

In support of her claim, the landlord submitted pictures of the patio, garbage on side of house, window sills, oven, kitchen floor area and driveway. The landlord also submitted a statement from a previous tenant stating he left the unit clean.

The tenant testified as follows:

- The tenant did not dispute the utilities claim made by the landlord.
- The tenant testified that she requested the fireplace to be serviced as there was a smell coming from it when she attempted to use it.
- Any damage to the patio was normal wear and tear from weather and from raccoons knocking over garbage. There were no oil stains on the patio.
- She left the unit in reasonable cleanliness and submitted pictures of the unit at the end of the tenancy in support. She did her best to clean the unit given she

was 6 months pregnant at the time. She acknowledged she did not clean the windows and did her best on the stove. The garbage at the side of the house was from the downstairs tenants. She acknowledged leaving some cinder blocks outside.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

As per sections 23 and 35 of the Act, the onus is on the landlord to complete a move-in and move-out condition inspection report.

The landlord is awarded \$196.79 in unpaid gas and electric bills which was not disputed by the tenant.

The landlords claim for the fireplace tune-up is dismissed. The tune-up was not required as a result of damage or neglect on the part of the tenant.

The landlord's claim for painting the patio is dismissed. The landlord failed to present any evidence as to condition of the patio at the beginning of the tenancy. The pictures submitted by the landlord also do not clearly reflect any damage. I find any damage to the patio was either pre-existing or normal wear and tear.

The landlord is awarded \$30.00 as claimed for cleaning the window sills, \$40.00 for cleaning the oven and \$40.00 for garbage removal. The pictures submitted by the landlord for the window sills and oven were left very dirty. The pictures also support a large amount of garbage left outside. The tenant acknowledged not cleaning the window sills and testified that she did her best on the stove. The tenant also acknowledged leaving some cinder blocks outside. I find on a balance of probabilities that the garbage left behind also belonged to the tenant and that the tenant did not leave the window sills and stove reasonably clean at the end of the tenancy.

The remainder of the landlord's claims for cleaning work are dismissed. The pictures submitted by the landlord for the kitchen floor and driveway area are not very clear and do not clearly reflect that these were left damaged or dirty.

The landlord's claim for postage to serve application documents is dismissed as this is not covered under the Act.

As the landlord was only partly successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application from the tenant.

Total entitlement for Landlord: \$306.79 (\$196.79 + \$30.00 + \$40.00 + \$40.00)

The landlord continues to hold a security deposit in the amount of \$750.00. The landlord is permitted to retain \$306.79 from this security deposit in full satisfaction of the monetary award and the balance of \$443.21 is to be returned to the tenant forthwith.

The tenant is granted a Monetary Order in the amount of \$443.21.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$443.21. 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: July 19, 2019

Residential Tenancy Branch