



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

On March 15, 2019, The Tenant applied for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for money owed or compensation for damage or loss under the *Act*, and for the return of the double the security deposit.

The matter was set as a teleconference hearing. The Tenant and Landlord appeared at the hearing. The Tenant was assisted by two advocates. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The original hearing was adjourned to allow the parties to submit a copy of an additional tenancy agreement. The Tenant’s advocate submitted that the parties agreed to extend the end date of the tenancy from December 31, 2018 to January 25, 2019. The parties only drafted the first two pages of the tenancy agreement with the updated dates.

Issues to be Decided

- Is the Tenant entitled to the return of double the security deposit?
- Is the Tenant entitled to money owed or other compensation under the Act, regulation or tenancy agreement?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 10, 2018, as a fixed term tenancy to end on January 20, 2019. Rent in the amount of \$600.00 was due by the 10th day of each month. The Tenant paid the Landlord a security deposit of \$300.00.

Two additional Tenants lived in the rental unit under separate tenancy agreements with the Landlord.

The Landlord and Tenant provided copies of the tenancy agreements. The tenancy agreements have a check mark next to electricity and internet indicating that they are included in the rent. However, the Landlord has written in the margin of the agreement that "Wi-Fi" fee and electricity fee is to be shared with roommates based on the bill.

Security Deposit

The Tenant is seeking a monetary order for \$600.00 which is double the amount of the \$300.00 security deposit.

The Tenant testified that the Landlord was provided with her forwarding address in writing on January 20, 2019. The Tenant referred to a document titled Move Out Unit Inspection which was created by the Landlord and which contains the Tenant's forwarding address.

The Tenant testified that she did not agree at the end of the tenancy that the Landlord could keep any amount of the security deposit. The Tenant signed the Move Out Unit Inspection document which indicates the Landlord could keep \$300.00 of the deposit for 15 days for electric fee or unpaid strata penalty. The Tenant submitted that she believed the Landlord would return the security deposit to her. The Tenant submitted that the agreement is ambiguous and contains the phrase "for 15 days" and does not specify an amount the Landlord can ultimately retain beyond 15 days. The Tenant provided a copy of the Move Out Inspection Document.

The Tenant testified that the Landlord sent her a cheque in the amount of \$18.00 approximately 15 days after the tenancy ended. The Tenant did not cash the cheque.

The Tenant testified that the Landlord failed to claim against the security deposit by applying for dispute resolution and failed to repay the full security deposit within 15 days after receiving the Tenant's forwarding address in writing.

In reply, the Landlord provided testimony that the Tenant signed the Move Out Inspection Document agreeing to let him keep the security deposit. He testified that he deducted an amount for a hydro bill and internet from the deposit and returned the balance to the Tenant.

Utility and Internet Payments

The Tenant is seeking to recover overpayments for internet and hydro electricity costs in the amount of \$138.00. The Tenant submitted that the tenancy agreement provides that utilities and internet services are included in the rent. The Tenant submits that the additional terms regarding electricity and internet "Wi-Fi" are not enforceable because there is a contradiction between the written term and the checked boxes.

The Tenant's advocates submit that when there is a contradiction or ambiguity in a contract, such as a tenancy agreement, the ambiguous term will be construed against the party responsible for its inclusion in the contract. The Tenant submitted that the Landlord is responsible for the inclusion of the ambiguity in the tenancy agreement. Further to this the Tenant submitted that the Landlord did not divide the electrical bill evenly between the three Tenants. The Landlord divided the electrical bill between two Tenants when one Tenant was out of the country.

The Tenants advocates referred to section 6 of the Act and submitted that the terms in the tenancy agreement should not be enforceable because they are not expressed in a manner that clearly communicates the rights and obligations under it and they contradict another term in the tenancy agreement.

The Tenants advocates submitted that where there is a contradiction or ambiguity in a contract, the contra proferentem rule of contract interpretation will apply. The Tenants advocates submit that the ambiguous term will be construed against the party responsible for its inclusion in the contract.

The Tenants advocates provided copies of Decisions where tenancy Arbitrators found that ambiguous terms of tenancy agreements were found to be unenforceable.

The Tenant testified that she paid one third of the internet costs. The Tenant paid an \$18.00 internet fee to the Landlord in October, November, December, and January. The Tenant is seeking a monetary order for the amount of \$72.00.

The Tenant testified that she paid the Landlord a \$66.00 electrical fee in December. The Tenant is seeking a monetary order for the amount of \$66.00.

The Tenant provided a copy of internet banking documents proving that she paid the internet and electricity fees to the Landlord.

The Landlord was asked whether the Tenants only shared the cost of the utility if they were present in the unit and the Landlord indicated yes. The Landlord indicated that he asked the Tenants if they want to pay for hydro if they are away from the unit and did not get an answer.

The Tenant testified that the Landlord did not explain to her that her roommates would not have to pay their portion of the utility if they were away/ not home. The Tenant testified that she told the Landlord that she does not want to pay the other Tenants share. She testified at that time she was afraid to not pay the Landlord.

The Tenant submitted that there are a number of other ambiguous terms in the tenancy agreement such as restriction of visitors to one hour and a \$10.00 fee for overnight guests. The Tenant submitted that the Landlord is attempting to circumvent the Act.

In reply, the Landlord testified that initially the monthly rent was \$650.00 each month and the Tenant asked him if he would lower the amount to \$600.00 each month. The Landlord submitted that the Tenant initialled the margin of the tenancy agreement indicating agreement with the Wi-Fi fee and electricity fee. The Landlord submitted that since he lowered the rent to \$600 per month, electricity is not included in the rent.

The Landlord submitted that from the beginning of the tenancy to the end of the tenancy the Tenant paid him without question. The Landlord submitted that there was no ambiguity and no reason for the Tenant to regret her decision to sign the agreement.

Analysis

Section 5 of the Act provides that Landlords and Tenants may not avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 6 (3) of the Act provides that a term of a tenancy agreement is not enforceable if:

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Sections 23 and 35 of the Act provides that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Each section also requires that the Landlord complete the condition inspection report; both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 20 of the Residential Tenancy Regulation requires that a condition inspection report must contain the following information:

- (a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;*
- (b) the address of the rental unit being inspected;*
- (c) the date on which the tenant is entitled to possession of the rental unit;*
- (d) the address for service of the landlord;*
- (e) the date of the condition inspection;*
- (f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:*
 - (i) entry;*
 - (ii) living rooms;*
 - (iii) kitchen;*
 - (iv) dining room or eating area;*
 - (v) stairs;*
 - (vi) halls;*
 - (vii) bathrooms;*
 - (viii) bedrooms;*
 - (ix) storage;*
 - (x) basement or crawl space;*
 - (xi) other rooms;*
 - (xii) exterior, including balcony, patio and yard;*
 - (xiii) garage or parking area;*
- (g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;*
- (h) any other items which the landlord and tenant agree should be included;*
- (i) a statement identifying any damage or items in need of maintenance or repair;*
- (j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;*
- (k) the following statement, to be completed by the tenant:*
I,

Tenant's name

[] agree that this report fairly represents the condition of the rental unit.

[] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....

..

.....

...

(I) a space for the signature of both the landlord and tenant.

Section 24 and 36 of the Act provides that the right of a Landlord to claim against a security deposit is extinguished if the Landlord has not complied with the requirements of a condition inspection report.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4) of the Act provides that a Landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the Landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Security Deposit

I find that the Landlord failed to complete a move in condition inspection and move out condition inspection in accordance with the Residential Tenancy Regulation. The Landlord's condition inspection reports do not contain all the required information in accordance with section 20 of the tenancy regulation. In accordance with sections 24 and 36 of the Act, the Landlord's right to make a claim against the security deposit is extinguished.

I find that there was no agreement by the Tenant that the Landlord could keep the security deposit. The document created by the Landlord, which indicates the Landlord could keep \$300.00 of the deposit for 15 days for electric fee or unpaid strata penalty, is ambiguous. I find that it does not meet the requirements of section 38(4) of the Act because it does not provide the actual amount that the Landlord is permitted to retain.

I find that the Tenant provided the Landlord with her forwarding address on January 20, 2019. The Landlord had 15 days, until February 4, 2019, to repay the full deposit or apply for dispute resolution to claim against it. I find that the Landlord failed to repay the full security deposit and failed to make application to claim against it.

Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit. I award the Tenant the amount of \$600.00.

Electricity and Internet

I find that the tenancy agreement provides that electricity and internet are included in the rent. I accept that the Landlord has written in the margin that a Wi-Fi fee and electricity fee is to be shared with roommates. I find that the Tenant initialed acceptance of these terms.

With respect to the internet fee, based on the Landlord's documentation, I find that the monthly cost was \$56.00. the Landlord's calculation document provides that the Tenant's share is \$18.00. I accept that the Tenant's share was \$18.00 each month. I find that the Tenant is responsible to pay her one third share of the monthly cost. I find that the Tenant paid her share each month. I find that the internet term clearly communicates that the Tenant will share the cost of Wi-Fi with roommates based on the bill. I find that the Tenant is not entitled to recover the internet payments that she made to the Landlord.

With respect to hydroelectricity costs, I find that the tenancy agreement is unclear that the Tenant would have to pay a higher portion of the bill when the other Tenants were away from home. I find that the Tenant did not agree to pay more hydro when another Tenant was away. I find that the Landlord takes the position that the term means he can unilaterally decide to split the bill with only one other Tenant when another Tenant is away. I find that the term in the tenancy agreement regarding payment of electricity is not enforceable because it is not expressed in a manner that clearly communicates the rights and obligations under it. The Tenant's claim to recover the hydro payment of \$66.00 is granted. I award the Tenant the amount of \$66.00.

Tenancy Agreement

Upon review of the fixed term tenancy agreement, I note that the agreement required the Tenant to vacate the rental unit on January 20, 2019. The reason provided by the Landlord is that the unit/ Livingroom needs to be renovated. I find that the Landlord did not have the right to end the tenancy for this reason. The Act was recently changed to prevent Landlords from ending a tenancy at the end of a fixed term.

Effective December 11, 2017, a tenancy agreement may only include a requirement that the tenant vacate the rental unit at the end of a fixed term if:

- the tenancy agreement is a sublease agreement; or
- the tenancy is a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation.

Section 13.1 of the Residential Tenancy Regulation provides the circumstances in which a Landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term. The circumstances are:

- (a) the landlord is an individual, and
- (b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

The Tenant is not seeking any relief due to this breach of the Act, and this finding is included in the Decision to provide the Landlord with information on the requirements of the Act, and Regulations.

Monetary Order

I find that the Tenant has established a monetary claim in the amount of \$666.00 for the return of double the security deposit and an electricity payment. I order the Landlord to pay the Tenant the amount of \$666.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord. If the Tenant is still holding the cheque from the Landlord in the amount of \$18.00, I order her to destroy it.

Conclusion

The Tenant's application for a monetary order to recover money owed and for the return of double the security deposit is successful.

I find that the Landlord failed to repay the security deposit and failed to make application to claim against it. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit. I award the Tenant the amount of \$600.00.

I find that the term in the tenancy agreement regarding payment of electricity is unenforceable because the Landlord arbitrarily divided the bill and therefore it is not expressed in a manner that clearly communicates the rights and obligations under it. The Tenants request to recover a \$66.00 payment is granted.

The Tenant is granted a monetary order in the amount of \$666.00.

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: August 21, 2019

Residential Tenancy Branch