



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlord: MNR MNSD FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 24, 2023, and June 13, 2023. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Landlord acknowledged receipt of the Tenant’s Notice of Dispute Resolution Proceeding and evidence (printed photos and emails). I find these items were sufficiently served. However, the Tenant did not serve her video files that she uploaded to the RTB, to the Landlord. As stated in the hearing, since the Tenant’s video files were not served to the Landlord, without any reason, I find they are not admissible, and will not be considered further.

The Tenant confirmed receipt of the Landlord’s Notice of Dispute Resolution Proceeding and evidence package and no further service issues were raised.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to monetary compensation for damage or loss under the Act?
- Is the Tenant entitled to the return of double the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that:

- monthly rent was \$950.00 and was due on the first of the month.
- The tenant moved in June 1, 2019
- The Landlord still holds a security deposit in the amount of \$450.00

The Tenant stated that she never gave her forwarding address in writing to the Landlord at the end of the tenancy. The Tenant stated she only asked the Landlord for her security deposit back via email.

Tenant's Application

The Tenant applied for the following 2 items:

- 1) \$5,000.00 – money spent on food and laundry

The Tenant provided a worksheet breaking down the above noted amount further and showing she is seeking \$4,500.00 for “Uber Eats” food delivery costs, and Uber taxi costs in the amount of \$500.00. The Tenant did not provide any receipt or proof of what was spent, on what. The Tenant asserts she had to pay the above noted amounts because she had to move out of the rental unit due to the Landlord's failure to deal with a leak in the boiler. The Tenant stated that there was a leak in the pipes around March 2022, and at that time, the Landlord was made aware of the issue but didn't take any

action to fix the matter. The Tenant stated that she believes there was mould developing, as her son, who has cystic fibrosis, started to have health issues. The Tenant stated that when the leak became problematic again, on or around May 17, 2022, she knew further repairs were going to be necessary to address the problem. The Tenant stated that she gave the Landlord a letter on or around May 19, 2022, stating she was going to move out temporarily so that the emergency repairs could be completed. The Tenant stated that she was forced to move out because of her son's health issues and the fact that the Landlord failed to clean up and repair the water leak in the unit for nearly two months, which contributed to her son's ill health.

The Tenant stated that she went and stayed in a hotel for 1.5 months, paid for by a women's help network, but she personally incurred lots of take-out food costs, moving costs, storage costs, and taxi costs.

The Landlord stated that when he was made aware of the potential water issue in March 2022, he stated that no leak could be located, and it appeared as though something had been dropped on the floor. The Landlord stated that no repairs were done at that time because there was no active leak. The Landlord stated that the Tenant told him of a new leak on May 17, 2022, and he had a contractor come to the unit right away, within a day or so, to repair the leak, which was a leak in the hot water boiler system for the house. The Landlord asserts that the Tenant is exaggerating the issue with the leaking boiler pipes, and denies that it was ongoing for months. The Landlord stated that the Tenant was also very difficult because she refused to move her personal belongings out of the way so that repairs could be completed. The Landlord stated that he had no idea that the Tenant was moving out until she came to collect her things on or around June 10, 2022.

The Tenant stated that she left the keys with the neighbour because the Landlord was not answering his door. The Tenant stated that there was no heat for most of her 2 year tenancy, and she had to use baseboards to heat the unit. The Landlord denies that this was the case, and asserts the furnace was working the whole time.

2) \$450.00 – security deposit

The Tenant stated that she is seeking the return of her security deposit, since the Landlord failed to return any of it, after the end of the tenancy. The Tenant stated that she did not give her forwarding address in writing to the Landlord but she did ask for her deposit back via email. The Landlord acknowledged that he still holds the deposit

because of all the unpaid rent and damages left by the Tenant. The Landlord filed an application against the deposit on September 7, 2022, for unpaid rent.

Landlord's application

The Landlord filed his application for \$5,975.00, under the following ground:

- I want to recover the money for the unpaid rent and/or utilities - request to retain security and/or pet damage deposit

The Landlord further stated that he is seeking unpaid rent in the amount of \$2,375.00 (for June, July and half of August rent), as well as garbage removal, cleaning and painting costs of \$3,600.00, totalling \$5,975.00. The Landlord uploaded a worksheet document stating the painting costs will be \$2,000.00, and the disposal of broken furniture will be \$1,000.00. The Landlord did not provide any receipt or further breakdown of the garbage removal, painting, and cleaning expenses.

The Landlord stated that the Tenant left the unit in filthy condition and it took nearly two months to clean and repair all the issues. The Landlord stated that he received the keys from the neighbour around June 15, 2022. The Landlord later stated that he received the keys from the neighbour in July sometime. The Landlord stated that the Tenant abandoned the unit around June 20, 2022 "or so", but he acknowledged receiving communications via email from the Tenant that she was going to be staying elsewhere. The Landlord stated that the Tenant's emails were not clear that she was going to be giving her formal written notice that she would be moving out, and when. The Landlord provided a scattered and unclear explanation as to the timeline of events, in terms of when the Tenant had left.

The Tenant stated that she moved out because the Landlord took too long to repair some water damage, and she was concerned with her son's health, given he has cystic fibrosis. The Tenant provided copies of some emails she sent to the Landlord, but most of them did not contain any response from the Landlord. The Tenant stated that she sent an email to the Landlord on May 29, 2022, stating she would be moved out by June 10, 2022. However, there was no email dated May 29, only one from May 28, which does not refer to June 10, 2022. The Tenant also stated she sent an email to the Landlord on June 10, 2022, stating she had moved out and referred to this email in her evidence. However, there is no email dated June 10, 2022, and only one from June 14, 2022. Both parties provided an unclear account of how and when the tenancy ended.

The Landlord stated that he didn't receive any rent for June 2022 onwards. The Landlord did not speak to when he was able to re-rent the unit to new Tenants.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Each application will be addressed separately. For each application, the burden of proof is on the person who made that application to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. The Applicant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Tenant's Application

The Tenant applied for the following 2 items:

- 1) \$5,000.00 – money spent on food and laundry

I have reviewed the testimony and evidence on this matter. I note the Tenant filed her application for \$5,000.00, and on that application, she indicated it was for "food and laundry in the hotel while [she] was homeless". Then, the Tenant uploaded a worksheet specifying she is seeking \$4,500.00 for "Uber Eats" food delivery costs, and Uber taxi costs in the amount of \$500.00. Since the Tenant failed to put any amounts on her worksheet or in her application for moving costs, and storage costs, I decline to consider any of those items. With respect to the items the Tenant asked for on her application, I note the onus is on the Tenant to sufficiently demonstrate the value of her loss. I note the Tenant has failed to provide any receipts or breakdown of how she arrived at the \$4,500.00 noted on her worksheet for "Uber Eats" food delivery. I find the

Tenant has failed to sufficiently substantiate her claim in this regard. Further, I also find the Tenant has failed to sufficiently demonstrate the value of her loss for the \$500.00 she noted on her worksheet for taxi costs. Again, no receipts or breakdown was provided. Without further evidence and details, I find the Tenant has failed to meet part 3 of the above noted 4 part test for monetary claims. I hereby dismiss the Tenant's application for these items, in full, without leave.

2) \$450.00 – security deposit

I have reviewed the testimony and evidence on this matter. Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I find the Tenant did not properly provide her forwarding address to the Landlord. I note the Tenant sent an email asking for the deposit back, but she did not provide her forwarding address. I also note the Tenant provided her address for service as part of her application for dispute resolution. However, I do not find this is sufficient to satisfy the requirement that she provide his forwarding address in writing for the return of the security deposit. Since the forwarding address was not properly provided from the Tenant to the Landlord, in writing, I decline to award double the security deposit. The Landlord currently holds the security deposit of \$450.00, which will be addressed further below, as part of the Landlord's application against the deposit for unpaid rent.

Landlord's application

The Landlord filed his application for \$5,975.00, under the following ground:

- I want to recover the money for the unpaid rent and/or utilities - request to retain security and/or pet damage deposit

The Landlord further stated that he is seeking unpaid rent in the amount of \$2,375.00 (for June, July and half of August rent), as well as garbage removal, cleaning and painting costs of \$3,600.00, totalling \$5,975.00. The Landlord uploaded a worksheet document stating the painting costs will be \$2,000.00, and the disposal of broken

furniture will be \$1,000.00. The Landlord did not provide any receipt or further breakdown of the garbage removal, painting, and cleaning expenses.

I have reviewed the testimony and evidence on this matter. I note the Landlord only selected the ground that he wants monetary compensation for unpaid rent on his application. As such, I find he is not entitled to recover for any amounts beyond unpaid rent as part of this application. I decline to consider any requests for painting, cleaning, and garbage removal, as the Landlord only selected the ground that he wants compensation for unpaid rent.

With respect to the unpaid rent, I note the Landlord is seeking \$2,375.00, which is comprised of June, July, and half of August 2022 rent. As noted above, a party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, I found the Landlord's explanation as to how and when the tenancy ended, and when he was provided with notice that the Tenant would be moved out, lacked clarity, consistency and detail. The Landlord provided differing dates on some items (when he received the key back). He was also unclear about when the Tenant moved out. The Tenant also provided an unclear account of when she formally gave her written notice that she would be vacating the unit. The dates in the emails she provided did not line up with the dates she noted in the hearing. Overall, I found there was a notable lack of clarity as to how and when the tenancy ended, which is central to the issue of unpaid rent. I find the Landlord has failed to sufficiently demonstrate his claim in terms of what rent is owed, and I hereby dismiss his claim for unpaid rent, in full.

Both applications are dismissed, in full. The Landlord is ordered to return the security deposit balance of \$450.00.

Conclusion

The Tenant is granted a monetary order in the amount of **\$450.00**, as specified above. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 27, 2023