



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for the cost of emergency repairs; for an Order for the return of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenant were permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant has named the landlords ex husband on the application. The parties all agreed at the outset that the landlord's ex-husband was never a landlord, was not named on the tenancy agreement as a landlord and has had no involvement in this tenancy. Therefore, the landlords ex husband left the conference call and his name will not be included on any Monetary Order.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for the cost of emergency repairs?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover double her security and pet deposit?

Background and Evidence

Both parties agree that this tenancy started on November 20, 2010. This was a fixed term tenancy which was due to expire on May 31, 2011. Rent for this unit was \$1,800.00 per month and was due on the 20th of each month in accordance with the tenancy agreement but was generally paid and accepted on the first day of each month. The tenancy ended on February 28, 2011. The tenant and landlord attended both a Move in and a Move out condition inspection and the tenant gave the landlord her forwarding address in writing on March 01, 2011.

The tenant testifies that at the beginning of the tenancy she had a plumbing issue. All the drains were slow to drain and the kitchen sink would not drain at all. The tenant testifies that she informed the landlord who told the tenant to run the garbrator with hot water. The tenant states she did this and used a drain clear product but nothing worked and the sink remained blocked. The tenant testifies she told the landlord she would have to get a plumber but the landlord was away at the time. The tenant testifies she found a plumber who came in on January 09, 2011 and cleared the drain at a cost of \$100.00. The landlord refused to pay this cost and the tenant sent the landlord a copy of the receipt with her application. The tenant testifies the plumber found bobby pins in the garbrator but the tenant testifies she did not cause this blockage because she does not use bobby pins and is therefore not responsible for this repair.

The tenant testifies that she had notified the landlord that the drains were slow from the start of her tenancy and there are text messages between them concerning this problem.

The tenant testifies that the landlord told her to get in a plumber and to pay whatever was reasonable to get the drains unblocked. The tenant has provided a copy of the receipt for this repair and seeks to recover this cost of \$100.00 from the landlord.

The landlord disputes the tenants claim. The landlord testifies that during the walkthrough there was no mention of a problem with the drains. It was a month later when they became blocked and the plumber later found bobby pins in the garbrator drain. The landlord states this would not be classified as an emergency repair as the tenant caused the drain blockage during her tenancy.

The tenant testifies that the landlord served her with a Two Month Notice to End Tenancy on January 31, 2011. This Notice had an effective date of March 31, 2011. The tenant testifies that she did not dispute the Notice but informed the landlord in writing that she would move out on February 28, 2011. The tenant states that therefore she should have got rent for February, 2011 for free in compensation for the Notice. The tenant states she went to the Residential Tenancy Branch who told her that the Notice was not legal as no boxes had been ticked giving a reason to end the tenancy and because her lease did not expire until May 31, 2011. The tenant explained that she had put a stop on her February rent check and was told that she should not have done this as at this time she had not given the landlord Notice.

The tenant states she received a call from the landlord's ex-husband who informed her that he was moving back into the unit on March 31, 2011 with their children due to a court order and that the tenant must vacate the rental unit and deal with any monetary issues with the landlord. The tenant states she then informed the landlord that her February rent cheque would be invalid and that she would have to come and pick up another cheque from the tenant. The tenant states on February 02, 2011 the landlord posted a 10 Day Notice to End Tenancy on the tenant's door. This notice had an effective date of February 12, 2011. The tenant states she also received another 10 Day Notice on February 15 saying the tenant had to move out on that date.

The tenant testifies the landlord refused to collect the rent for February and the tenant informed the landlord that the landlord still has to pay the tenant compensation for the Two Month Notice. The tenant has provided a copy of the Two Month Notice in evidence.

The landlord disputes the tenants claim and testifies that she does not recall serving the tenant with a Two Month Notice to End Tenancy. The landlord testifies the tenant stopped the rent cheque for February and the 10 Day Notice to End Tenancy was served to the tenant on February 02, 2011. The tenant failed to pay the outstanding rent within five days and regardless of the lease the tenancy would end on that day. The landlord testifies that it is the tenant's obligation to send her the rent cheque and the landlord testifies that she does not recall arranging to meet the tenant as she does not live in the same area.

The tenant testifies that the landlord sent her a text message informing the tenant that she would be there the next day to collect the rent, but failed to do so. The tenant has provided copies of the text messages between the landlord and tenant concerning the collection of the rent.

The tenant seeks to recover her moving costs incurred when she moved into the unit and when she was forced to move out of the unit along with the kennel costs for boarding her dog during the moves. The tenant has provided copies of her moving receipts and kennel fees. For the move in costs the tenant seeks to recover the sum of \$296.50 and \$99.99 for kennel costs for four days. The tenant seeks to recover \$200.00 for a helper and truck and \$95.09 for the U-Haul truck to move out along with \$40.00 for kennel costs.

The landlord disputes that she is responsible for the tenants moving costs and kennel fees.

The tenant seeks to recover the sum of \$56.77 from the landlord for having to have her mail redirected because she was forced to move from the rental unit before the end of the fixed term.

The landlord disputes that she is responsible for this cost.

The tenant testifies that the electrical bills were in the tenants name at the start of the tenancy and the landlord agreed to pay 20 percent of the bills because there was a tenant in the basement unit. The tenant states the landlord has failed to pay her share of the bills. The tenant has provided copies of these bills in evidence which total \$816.10 the tenant has calculated the landlords share to be \$163.22. The tenant seeks a Monetary Order to recover this sum from the landlord.

The landlord does not dispute that she did have an agreement to pay 20 percent of the bills however the landlord testifies that as the tenant did not pay rent for February or March that the tenant owes the landlord money so the landlord has withheld her share of the bills in partial satisfaction of this.

The tenant testifies that the landlord was given her forwarding address in writing on March 01, 2011. The tenant states the landlord had fifteen days to return her security and pet deposits and has failed to do so. The tenant states she therefore seeks to recover double her deposits to the sum of \$2,600.00.

The landlord disputes the tenants claim for double her security deposit and pet deposit the landlord testifies as the tenant broke the lease the tenant owes the landlord rent for two months.

The tenant requests to recover the \$50.00 filing fee paid for this application from the landlord. The tenant did not call her witness to give evidence.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the tenants claim to recover the sum of \$100.00 for the garbrator/plumbing repairs; It is my decision that the tenant acted reasonable when the sinks were blocked. The tenant contacted the landlord to inform her of this issue and obtained a plumber as per the landlord's instruction. The landlord has provided no evidence to support her claim that the tenant caused this damage to the garbrator with bobby pins

therefore I find the landlord is responsible for this repair and the tenant is entitled to a Monetary Order for the sum of **\$100.00** pursuant to s. 67 of the *Act*.

With regard to the tenants claim concerning compensation for the Two Month Notice to End Tenancy; I refer the parties to s. 50 and 51 of the Act which states, in part, that

If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

I find the Two Month Notice was invalid as the landlord was not entitled to serve the tenant with a Notice of this kind as this was a fixed term tenancy which was not due to expire until May 31, 2011 and as the Notice had no reasons checked off on page two of the Notice providing a valid reason to end the tenancy. The tenant did however act in good faith when she was served with this Notice and did not dispute the Notice as there was a Court Order for the landlord's husband to move into the rental unit on March 31, 2011. The tenant received this Notice on January 31, 2011 and then put a stop on her rent cheque for February, 2011.

In this matter the tenant was not entitled to stop her rent cheque for February, 2011 as at that point she had not given the landlord 10 day notice to end her tenancy early; however as the tenant realized she had made a mistake in stopping her rent cheque I am satisfied from the evidence presented that the tenant made many reasonable attempts to meet with the landlord to pay the rent and the landlord refused to meet the tenant. Therefore, it is my decision that the tenant did attempt to pay her rent for February prior to giving the landlord her 10 day notice on February 14, 2011. Consequently s. 51 of the *Act* remains in force and the tenant is able to deem February, 2011 as her authorised month to withhold her rent in compensation for the Two Month Notice to End Tenancy. I further find in light of this the 10 Day Notices have no effect.

Due to the reasoning above I find the landlords argument that she withheld her share of the electricity bills because the tenant owed rent for February and March, 2011 to have little consequence. The landlord agrees she had an agreement with the tenant to pay 20 percent of these bills and failed to do so. Therefore I find in favour of the tenants claim to recover the sum of **\$163.22** from the landlord pursuant to s. 67 of the *Act*.

With regard to the tenants claim for moving costs and kennel fees for housing her dog while she moved in and out of the unit. The reason for a landlord to provide compensation

equivalent of one month's rent to a tenant when a Two Month Notice to End Tenancy is issued is to compensate a tenant for moving costs. Therefore, I find the tenant is not entitled to recover her costs for moving out of the rental unit including any kennel fees. The landlord is not reasonable for paying the tenants costs to move into the unit which include any costs associated with putting the tenant's dog in kennels. Therefore, this section of the tenants claim is dismissed without leave to reapply.

With regards to the tenants claim for double her security and pet deposits; s. 38 of the *Act* states that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit and pet deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on March 01, 2011. As a result, the landlord had until, March 16, 2011 to return the tenants security deposit and pet deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit or pet deposit and has not filed an application for Dispute Resolution to keep either deposits. Therefore, I find that the tenant has established a claim for the return of the security deposit of \$900.00 and pet deposit of \$400.00 and pursuant to section 38(6)(b) these deposits will be doubled to the sum of **\$2,600.00**.

With regards to the tenants claim to recover the sum of \$56.77; the tenant testifies that this is a cost she would not have incurred had the landlord not ended the tenancy before the end of the fixed term. I find that the tenancy was due to end on May 31, 2011 the tenant could at that time have notified anyone sending mail to her of her new address prior to moving. However, as the tenant did not expect to move out prior to this date as she had a

fixed term lease I find the tenant is entitled to recover the costs incurred in redirecting her mail to the sum of **\$56.77** pursuant to s. 67 of the **Act**.

As the tenant has been partially successful with this claim I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the tenant for the following amount:

Plumbing repairs	\$100.00
Landlords share of electricity bill	\$163.22
Double security and pet deposit	\$2,600.00
Mail redirection fee	\$56,77
Filing fee	\$50.00
Total amount due to the tenant	\$3,046.22

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$3,046.22**. The order must be served on the respondent and is enforceable through the Provincial Court 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: January 03, 2012.

Residential Tenancy Branch