

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

There are applications filed by both parties. The Landlord is seeking a monetary order for damage to the unit, site or property, for unpaid utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee. The Tenant is seeking a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have given detailed reference to the evidence submitted by the other, I am satisfied that each has been properly served with the notice of hearing and evidence packages.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that this Tenancy began on March 18, 2011 on a month to month basis and ended on October 16, 2011. A copy of the signed tenancy agreement was submitted by the Landlord. The monthly rent was \$1,200.00 payable on the 15th of each month. A security deposit of \$600.00 was paid. The Tenant gave notice to vacate the rental unit on September 26, 2011 by email, which the Landlord accepted. Both parties confirmed that the Tenant gave the forwarding address in writing dated October 31, 2011 by regular mail to the Landlord who received it on November 8, 2011.

The Landlord seeks to recover \$10.00 for utility arrears from July 2011. The Landlord states that the Tenant is responsible for 35% of the utility bill and has pointed to section 3 of the tenancy agreement and has supplied a copy of the July utility bill. The Tenant disputes this stating that the \$10.00 was paid. Both parties agreed that no invoices or receipts were used in the paying of the utilities.

The Landlord is seeking to recover the last months utility bill where the Tenant's 35% share is pro-rated to \$56.89. The Landlord has submitted a copy of the utility bill. The

Tenants do not dispute this amount and stated that until this hearing was not provided with a copy of the invoice.

The Landlord is seeking \$600.00 for damages caused by the installation of a satellite on the roof of the property. The Tenants state that permission was granted by the Landlord for this installation, therefore the Tenants are not responsible for it. The Landlord disputes this stating that no permission was granted. The Tenants are unable to provide any supporting evidence that permission was given by the Landlord. The Tenant states that that a Telus Technician will be attending on this day (January 27, 2012) to remove the satellite. The satellite as of the date of this hearing has not been removed. The Landlord has submitted copies of email estimates from two contractors.

The Landlord is also seeking recovery of \$600.00 for loss of rental income. The Landlord states that the Tenant failed to give adequate notice. The Landlord states that he immediately started to advertise the rental on September 26, 2011 and started showings on September 28, 30 and October 1. The Tenant was able to re-rent the unit for November 1, 2011. The Tenant stated that they were only 1 week shy of the 1 month notice.

The Tenant seeks the return of double the security deposit of $\$600.00 \times 2 = \$1,200.00$.

Analysis

I find that the Landlord's claim of \$10.00 for utility arrears has not been established. The onus or burden of proof is on the party making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The Landlord's claim of utility arrears is disputed by the Tenant and the Landlord has no supporting evidence. I find that this portion of the Landlord's claim is dismissed.

The Landlord's claim for utility arrears of \$56.89 has been established. The Tenant has conceded this cost in his direct testimony. I find that the Landlord is entitled to recovery of the \$56.89 utility claim.

I find that the Landlord's claim of \$600.00 for damages caused by the satellite is premature. As confirmed by both parties, the satellite as of the date of this hearing has

not been removed from the roof. The Landlord's email estimates provide no details of damage as it appears that they are just standard estimates with no actual viewing of damage. I find that this portion of the Landlord's claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. The Landlord is at liberty to reapply when a true accounting of any damage is assessed.

The Landlord's claim of \$600.00 in loss of rental income has been established. The Tenant failed to provide proper notice to end the tenancy. Section 45 of the Residential Tenancy Act states,

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Tenant gave direct testimony that notice to end the tenancy on September 26, 2011 by email, which the Landlord accepted. The Landlord stated that he immediately advertised the rental unit on the same day and began showings on September 28, 2011. I find that the Landlord tried to mitigate his losses by advertising the rental immediately and was successful in re-renting the unit on November 1, 2011. The Landlord is entitled to his claim of \$600.00 for loss of rental income for the period October 15 – 31, 2011.

The Tenant's claim of \$1,200.00 for the return of double the security deposit (\$600.00) has not been established. Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Both parties agreed that the Landlord received the forwarding address in writing from the Tenant on November 8, 2011 in a note dated October 31, 2011 sent by regular mail. The Landlord filed for dispute on November 9, 2011. The Tenant's claim for double the security deposit is dismissed.

The Landlord has established a claim for \$56.89 utilities and \$600.00 for loss of rental income totalling, \$656.89. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$600.00 security deposit in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$106.89. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$106.89.
The Landlord may retain the security deposit.

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 27, 2012.

Residential Tenancy Branch