

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for money owed or compensation for damage or loss, to keep all or part of the security deposit and the recovery of the filing fee. The Tenant has also applied for a monetary order for money owed or compensation for damage or loss and the return of the security deposit.

Both parties attended the hearing by conference call and gave testimony. Both parties submitted documentary evidence. As both parties have attended the hearing and have acknowledged receiving the notice of hearing and evidence packages submitted by the other party, I am satisfied that both parties have been properly served.

At the beginning of the hearing it was clarified with both parties that since the Tenant had applied for two difference applications and requested that they be combined/amended and cross referenced with the Landlord's that the amendment would be dealt with together with the Landlord's application.

It was also clarified with both parties at the beginning of the hearing that their claims for postage and photographs would not be considered because Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the claims for recovery of litigation costs are dismissed for both parties.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain all or part of the security deposit?

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on December 1, 2011 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The Tenancy ended on June 30,

2012. The monthly rent was \$1,300.00 payable on the 1st of each month and a security deposit of \$700.00 was paid on November 15, 2011. Both parties agreed that a condition inspection report for the move-in was completed on December 1, 2011 and that no condition inspection report for the move-out was completed. Both parties also agreed that the Tenant provided the Landlord with their forwarding address in writing on July 5, 2012.

I find based upon the above that the Tenant's request for the return of double the security deposit has not been established pursuant to section 38. The forwarding address in writing was given to the Landlord on July 5, 2012, the Tenancy ended on June 30, 2012 and the Landlord applied for dispute resolution on July 9, 2012 in compliance with the Act. This portion of the Tenant's claim is dismissed.

The Tenant also seeks compensation in the amount of \$1,734.28, which consists of ½ of the BC Hydro bill incurred by the Tenants during their Tenancy from December 1, 2011 to June 30, 2012. The Tenants have provided copies of their BC Hydro Bills. The Landlord disputes this claim. The Tenants state that the majority of usage for the hydro comes from the barn on the property as her monthly charges are excessive. The Landlord states that the usage seems normal in their opinion, but state that the barn is an equal size to the house and that the only usage from the barn comes from a freezer and fridge. The Landlord states that the rental was originally advertised at \$1,400.00 and that the Tenants brought up this issue at the beginning of the Tenancy. Both parties agreed that \$100.00 be taken off of the advertised rent making it \$1,300.00 per month in exchange for the hydro usage from the barn. The Landlord has provided a copy of a letter from a licensed electrician from an inspection made regarding the amount of usage from the barn. The Tenant disputes this stating that the Landlords are subject to an ongoing police investigation, but that results have not yet been given. I find on a balance of probabilities based upon the documentary evidence provided by the Landlord that the Tenant has failed to establish her claim of compensation for recovery of ½ of the BC Hydro bills. The Tenant has failed to satisfy me that excessive hydro consumption occurred from the barn costing the Tenants a higher than normal bill. This portion of the Tenant's claim is dismissed.

The Landlord seek \$300.00 for cleaning of the rental unit, which consists of an invoice from "EZ4U Cleaning" dated July 27, 2012 for \$150.00 for 7 ½ hours of work(\$20.00 per hour). The Landlord also seeks \$150.00 for herself for cleaning for the same amount of time alongside the contracted worker. The Tenant disputes the Landlord's claim stating that the house was cleaned for 5 ½ hours prior to the end of the Tenancy. The Tenant has submitted photographs in support that were taken at the end of Tenancy. The Landlord has also provided photographs in support of their claim. The Tenant disputes

the photographs submitted by the Landlord. The Landlord states that the photographs were taken on July 7, 2012 the same date that they were taken to be developed. I find on a balance of probabilities that the Landlord has established a claim for the \$300.00 cleaning claim. The Tenant provided in both her documentary evidence and direct testimony that she "didn't clean all of it" in her conversation with the Landlord during the attempted condition inspection report for the move-out. The Landlord has established their claim for total cleaning claim of \$300.00.

The Landlord seeks compensation for recovery of \$60.00 for 1 lawn cutting service performed by "Fairfield Landscaping" for \$60.00. The Tenant disputes this stating that the lawn was cut approximately 1 week prior to the end of tenancy. The Landlord disputes this and has provided photographs taken of the lawn on July 7, 2012. Based upon the above facts, I find on a balance of probabilities that the Tenant failed to comply with maintenance of the lawn. The Landlord has established their claim for recovery of the \$60.00 lawn charge.

The Landlord is also seeking compensation for \$336.00 for steam cleaning all carpets at the rental address by "Zippee Building Maintenance". The Tenant disputes this stating that the carpets were vacuumed and that she administered a spray on the carpets. The Tenant's state that the carpets were in satisfactory condition at the end of the Tenancy. The Landlord states that it was a requirement to shampoo the carpets at the end of the tenancy. Both parties agreed that there were no provisions in the Tenancy Agreement for this requirement. The Landlord cannot provide any other reason for the carpets to be steam cleaned. I find that the Landlord has failed to establish this portion of the claim. There is no requirement by the Tenant to perform this action at the end of the Tenancy and the Landlord cannot provide any other explanation for this claim. This portion of the application is dismissed.

The Landlord currently holds the \$700.00 security deposit paid by the Tenants. The Landlords have established a total monetary claim of \$360.00. As both parties have been partially successful in their applications, I decline to make any order for the return of the filing fees for each party. Each party shall be responsible for their own filing fees. The Landlord has failed to comply with section 36 of the Residential Tenancy Act and by doing so has extinguished their right against the security deposit. However, as the Landlord has established a claim for damages and currently holds the security deposit in trust, I order that the Landlord retain \$360.00 from the \$700.00 security deposit in satisfaction of their claim. The Tenants are entitled to the return of the difference of \$340.00. I grant the Tenants a monetary order under section 67 for \$340.00. 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 may retain \$360.00 from the \$700.00 security deposit.
The Tenant is granted a monetary order for \$340.00.

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 22, 2012.

Residential Tenancy Branch