



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, MND, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant filed for a monetary order for return of double the security deposit under section 38 of the Act, for monetary compensation for losses under the Act and tenancy agreement, and to recover the filing fee for the Application.

The Landlord filed for a monetary order for damage to the rental unit or property, for monetary compensation for losses under the Act and tenancy agreement, for unpaid rent and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Although I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to the monetary relief sought?

Is the Tenant entitled to return of double the security deposit or other monetary compensation?

Background and Evidence

This tenancy began on May 1, 2012, with the parties entering into a written, six month fixed term tenancy agreement (the “tenancy agreement”). The Tenant was to pay \$1,000.00 a month in rent and paid the Landlord a security deposit of \$500.00 on or

about April 14, 2012. The parties agree that the Landlord did not perform incoming or outgoing condition inspection reports.

Tenant's claims

At the outset of the tenancy the parties agreed there were numerous holes in the walls of the rental unit which needed to be repaired. The Landlord and Tenant agreed that the Tenant and her partner would patch and repair the holes and repaint the unit, and the Landlord agreed in writing to reimburse the Tenant for her "expenditures". The sum of \$231.30 was deducted from rent to reimburse the Tenant for her expenditures.

In her Application, the Tenant now claims for an additional \$250.00 for labour and some drywall materials for performing this work.

The Tenant submitted in evidence handwritten notes dated May 29, 2012, in which she pointed out to the Landlord the deficiencies in the rental unit, which included but were not limited to cleaning up the rental unit, problems with the garburator and with the dryer hose.

On June 6, 2012, there was a flood of water from the clothes washing machine into the rental unit. The Tenant alleges the insurance company informed her she would have to leave the rental unit to allow for restoration. The Tenant had young children to relocate as well.

The Tenant testified that she could only leave the rental unit for three or four days. The Tenant testified that she had no family to stay with and could not afford to stay in a hotel or travel to her family. The Tenant testified she returned to stay in the rental unit off and on for about the next three weeks. The Tenant testified that it was very difficult living amongst the fans and dehumidifiers, and on cement floors, and in the general mess of the restoration. The Tenant claims \$1,000.00 for the return of June rent for loss of use of the rental unit and for loss of quiet enjoyment of the rental unit.

The Tenant claims that during the restoration work performed by the Landlord a foot board for her bed was damaged when it was moved and claims \$278.88 for replacing this. The Tenant also claims a TV credenza was damaged when it was moved and claims \$188.16 for this.

The Tenant further claims that her herb garden was covered with sawdust and requests \$30.00 in compensation for this. As well, the Tenant claims a baby shade pool was also damaged and claims \$24.63 for this.

In late June the Tenant gave the Landlord written notice she was vacating the rental unit, due to the condition it was in.

The Tenant claims for \$571.20 in moving costs, for the recovery of double the security deposit in the amount of \$1,000.00, and for the return of her filing fee of \$50.00 for the Application.

In reply to the Tenant's claims, the Landlord testified he kept the security deposit because the Tenant broke the fixed term lease. The Landlord also alleged the Tenant caused the flood in the rental unit which may have damaged her furniture, but otherwise he knew nothing about the alleged furniture damage.

The Landlord testified that after the flood the Tenant quickly concluded that she wanted to leave the rental unit. The Landlord testified that despite this the Tenant was in the rental unit for the rest of the month of June, and was not there for only four days. The Landlord also testified that moisture levels in the rental unit were reading at a normal level after four days of remediation. The Landlord testified he offered the Tenant to stay in another house, but it seemed the Tenant was prepared to move out and preferred to do so.

The Landlord testified he was prepared to allow the Tenant to end the tenancy on one calendar month of notice. The Landlord testified that the pictures provided in evidence by the Tenant actually show a liveable suite and one she did not have to vacate.

The Landlord testified that at the outset of the tenancy he agreed to pay for the materials for the wall repairs, but he did not agree to pay for labour.

The Landlord testified that the Tenant's herb garden would have been cleared of sawdust with the first wind or rain.

Landlord's Claims

The Landlord claims the Tenant breached the fixed term lease when she vacated the rental unit at the end of June 2012. The Landlord claims for one month of rent at \$1,000.00. The Landlord testified that the rental unit was in liveable shape when the Tenant vacated.

The Landlord claims the Tenant owes \$50.00 for power for June.

The Landlord testified that the Tenant removed a shower head from the bathroom and claims \$17.00 for this.

The Landlord claims the Tenant removed closet doors in the rental unit and did not reinstall them. He claims \$25.00 for this.

The Landlord claims \$5.00 for a drawer slide in the closet and \$25.00 for the repair of a drawer slide in the bathroom.

The Landlord claims the Tenant damaged the garburator and claims \$150.00 for this.

The Landlord claimed the Tenant caused the flood in the rental unit and he claims the insurance deductible of \$1,000.00 against the Tenant.

The Landlord testified that the Tenant moved the washer and dryer when she reattached the dryer hose. The Tenant apparently moved these to a different area in the laundry room. The Landlord testified that the dryer had to be in a very specific position otherwise the dryer would not vent properly.

The Landlord testified that he reinstalled the washer and dryer to their original positions and built shelves around them, to make it difficult for the Tenant to move them. The Landlord alleges that the Tenant started a load of washing with the washer hose taken out of the drain spout.

In reply to the Landlord's claims, the Tenant agreed she did not pay June power due to the amount of fans and equipment used in the restoration, but she agreed to pay \$50.00 for this month, as that was what she paid in May before the flood.

The Tenant testified that the shower head was removed and stored in the bathroom.

The Tenant agreed she removed the closet doors.

The Tenant testified that after the Landlord repaired the washer and dryer she did not move these at all. She testified she simply put in a load of washing and went to bed. She alleges the Landlord must have dislodged the water hose when he made the repairs.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the following.

Tenant's Claims

I find the Landlord has breached section 38 of the Act. There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was no evidence to show that the Landlord had applied, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to

keep a portion of the security deposit as required under section 38. I note the Landlord did not claim for the deposit in the present Application.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

Therefore, I find the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies. The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit and I must order the Landlord to return double the security deposit to the Tenant in the amount of **\$1,000.00**, under section 38 of the Act.

I also find the Tenant experienced a total loss of use of the rental unit for a period of four days and experienced some loss of quiet enjoyment during the flood remediation over the next few days. I find the Tenant is entitled to a rent reduction of 25% for the month of June in the amount of **\$250.00** due to the flood and remediation work.

I do not find the Tenant is entitled to further compensation for the drywall work done in the rental unit. The Landlord did not agree to pay for labour, only expenditures the Tenant had to expend money on. I find the Tenant was already compensated for this work and I dismiss her claim for an additional amount.

I also dismiss the Tenant's claims for the alleged damages to the furniture or baby pool. The Tenant had insufficient evidence to prove the Landlord damaged these and that they were undamaged before the flood.

I also dismiss the Tenant's claim for moving costs, as it was solely the Tenant's choice to vacate the rental unit and the Landlord is not responsible for this.

I also dismiss the Tenant's claims for her herb garden, as she failed to provide evidence that the sawdust contaminated her garden.

Therefore, I find the Tenant has established a monetary claim of **\$1,250.00**, subject to any set off in the Landlord's amounts awarded below.

Landlord's Claims

I find the Tenant breached the Act and tenancy agreement by ending a fixed term tenancy without authority to do so.

Under section 45(3) of the Act the Tenant could not end the tenancy earlier than the fixed term date of October 31, 2012, unless there was some authority under the Act for her to do so. For example, if the Tenant felt the Landlord was in breach of a material term of the tenancy agreement, she should have written to the Landlord with a request to correct the breach and provide a reasonable time to do so. If the Landlord did not correct the problem within that reasonable time, then the Tenant might have ended the tenancy by giving notice earlier than the end of the fixed term. While the Tenant pointed out the problems in the rental unit to the Landlord, she did not give the Landlord notice that failure to deal with the problems in a certain amount of time would cause her to treat these as a breach of the tenancy agreement and she would end the tenancy agreement.

Therefore, as the Tenant breached the tenancy agreement and the Act by ending the tenancy without authority to do so, I find the Landlord is entitled to compensation in the amount of one month of rent at **\$1,000.00**.

Based on the Tenant's testimony, I also find the Landlord has established the Tenant owes **\$50.00** for power and **\$25.00** for re-hanging the closet doors taken down by the Tenant.

I dismiss all of the other claims of the Landlord due to insufficient evidence. I find the Landlord failed to prove the Tenant was responsible for the flood, or had removed the shower head from the rental unit, or had damaged the garburator or any other portion of the rental unit.

Having made the above findings, I award the Landlord the sum of **\$1,075.00**.

Having found that both parties have established a loss and both are entitled to a monetary order, I order these amounts to be offset. The Landlord's award of \$1,075.00 is offset against the Tenant's award of \$1,250.00, leaving a balance due of **\$175.00** payable by the Landlord to the Tenant.

I do not award the filing fees for the Applications, as I find these offset each other as well.

Conclusion

The Tenant is granted a formal order for the return of **\$175.00** from the Landlord and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: November 23, 2012.

Residential Tenancy Branch