



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for the return of the security and pet deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and her lawyers and landlord and her agent attended the conference call hearing. The tenant and landlord gave sworn testimony and were given the opportunity to cross examine 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. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

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

Background and Evidence

The parties agree that this month to month tenancy started on March 01, 2011 and ended on October 12, 2011. Rent for this unit was \$800.00 per month due on the 1st of each month. The tenant paid a security deposit of \$400.00 and a pet deposit of \$100.00 on March 01, 2011. The parties also agree that the landlords did not complete a move in or a move out condition inspection of the rental unit at the start and end of the tenancy.

The tenant's lawyer submits that she had to move from the rental unit because the landlords failed to provide adequate heating, therefore leaving the rental unit unfit for occupation. This lack of heating made the tenant ill and the tenant's illness has been confirmed by the tenant's doctor's notes.

The tenant's lawyer submits that the heating was included in the rent. This is a three story building and the tenant occupied the lower level, the landlord lived on the middle level and other tenants occupied the top level. The tenant's lawyer submits that the landlord wrote a memo to all occupants advising of an increase in Hydro costs and wanted all tenants to share a three way split of the Hydro. The tenant did not agree to this as Hydro was included in her rent and the tenant already had inadequate heating.

The tenants lawyer submits that the landlord knew there was a problem with the heating to this unit prior to the tenant moving in as the landlord has submitted a copy of a utility bill dated January 26, 2011 on which the landlord has made hand written notes indicating that the landlord had called City hall regarding space heaters. The tenant's lawyer submits that this clearly shows the landlord was aware of the problem existing in this unit. The tenant's lawyer submits that the tenant had to provide a space heater to keep warm and had to move this from room to room.

The tenant's lawyer submits that the tenant verbally advised the landlord that there was no heat immediately after moving in and continued to complain throughout the tenancy. The tenants lawyer submits that the tenant did not put this in writing to the landlord has the landlord is visually impaired. The tenant tried to resolve this problem as she wanted

to stay in the unit and advised the landlord verbally that she would move out at the end of September, 2011. However the landlord told the tenant she would have to pay rent for October, 2011. The tenant paid this rent but now seeks to recover it to the sum of \$800.00 in compensation.

The tenant's lawyer states that they provided their address as a forwarding address to the landlord by letter on October 25, 2011. This letter clearly indicates that the landlord must return the tenants security deposit of \$400.00 and pet deposit of \$100.00 to the tenant at that address and to correspond with the tenant at that address.

The landlord testifies that they did not have a forwarding address for the tenant and the first they knew of this dispute was when they received a letter from the tenant's lawyer on October 25, 2011. The landlord testifies that the tenant refused to attend a move in inspection of the unit at the start of the tenancy and moved out without written notice while the landlord and her husband were away. The landlord testifies that the other tenants informed the landlord that this tenant was moving out so they posted a notice of inspection and upon entering the rental unit they determined that the tenant had moved out. The landlord testifies as no notice was provided and no forwarding address has given to the landlord, the landlord was not able to contact the tenant to do a move out condition inspection.

The landlord testifies that the tenant never complained about a lack of heat until the landlord spoke to the tenant in May, 2011 about the high Hydro bill. The landlord testifies that the tenant got excited and then refused to talk to the landlord. The landlord testifies that the tenant did use a space heater, but when the tenant moved in she had told the landlord that she had to move out of her son's house because it was cold and had made her ill. The landlord testifies that the tenant was already ill when she moved into the unit.

The landlord testifies that they have never had any complaints about a lack of heat from other tenants residing in this unit; in fact the previous tenant complained it was too hot.

The landlord has provided a letter from a previous tenant who has stated she never had a problem with the unit being cold.

On cross examination by the tenant's lawyer to the landlord the landlord testifies that they do live on the main floor and the heating is central heating with a thermostat located in their unit. The landlord testifies that the heating is forced air heating through the gas supply and they have never had to provide a tenant with supplementary heaters. The landlord testifies that the bill the landlords lawyer refers to with hand written notations is concerning the previous tenant's use of electricity because that tenant had an electric fire place on all the time for its looks and not for heat. That is why the other tenant complained that the unit was too hot. When the landlord called City Hall they suggested the increase in Hydro was because of a possible use of space heaters, but on investigation it was this electric fire place and that is why the landlord's husband had made these notations on that bill.

The landlord testifies under cross examination that the basement is not cold and the tenant did not complain until May when the landlord first showed the tenant the increased Hydro bill and the tenant was asked about the use of space heaters. The landlord testifies that they first suggested to all the tenants that everyone shares the hydro bill and then they put this in a memo in September as this tenant did not respond.

The tenant's lawyer submits that the tenant has a different side to this story. The landlord testifies that the tenant did not complain about being cold and the landlord never suggested to the tenant to put extra blankets on her bed as suggested in the tenants documentary statement.

The tenants lawyer, on cross examination, asks the landlord if the landlord was present on the day the tenant moved out and did the landlord hand the tenant a letter. The landlord replies that they were not present and were out all day and then out for dinner in the evening. The landlord testifies that at the end of September they told the tenant she had to pay rent for October because the tenant was always late with her rent and not because the tenant had told the landlord she was moving out.

The tenant testifies that she had told the landlord and the landlord's husband that she had to turn the space heater on at 11.00 p.m. because she was cold and there was no heat coming out of the units heaters.

The landlord disputes this and states the tenant never informed the landlord or the landlord's husband that she was turning space heaters on at 11.00 p.m. and the landlord disputes that there was no heat coming out of the heaters.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for compensation of \$800.0;. In this matter the tenant has the burden of proof to show that there was inadequate heating in the rental unit and that the tenant had informed the landlord of this. When one person's testimony contradicts that of the other then the person making the claim must provide corroborating evidence to meet the burden of proof.

The landlord disputes that the tenant complained about a lack of heating until May, 2011, the landlord also disputes that there was inadequate heat in the tenant's rental unit. The tenant has provided documentation from her doctor giving hand written notes on treatment however these notes are difficult to decipher and other than a note made on October 26, 2011 that says "has moved house was too cold (unknown notations) living situation was unacceptable" this is insufficient to determine that the tenants illness was brought on by living without adequate heat. Therefore without sufficient corroborating evidence to support the tenants claim then it becomes one person's word against that of the other and therefore the burden of proof is not met and this section of the tenants claim is therefore dismissed.

With regard to the tenants claim for the return of her security and pet deposit; I have considered the letter sent to the landlord on October 25, 2011 from the tenant's lawyer's

office. In this letter the tenant's lawyer requested the landlord to return the security and pet deposit to the tenant at the address for the lawyer. The landlord agrees they did receive this letter. Consequently, I find the tenant did provide a forwarding address to the landlord on October 30 allowing five days for postage pursuant to s. 90 of the *Act*.

Section 38 of the *Act* states that, if the landlord does not either return the security or pet deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security and pet deposit.

The landlord has not returned the tenants security or pet deposit or applied for dispute resolution to keep any or all of tenant's security and pet deposit and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Sections 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

Therefore even though the tenant has not applied for double the security and pet deposit, I am required to order that the landlord must pay double the amount of the security deposit of \$400.00 (\$800.00) and pet deposit of \$100.00 (\$200.00) to the tenant.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,000.00**. The order must be

served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenants claim for money owed or compensation for damage or loss is dismissed without leave to reapply.

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: November 08, 2012.

Residential Tenancy Branch