



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for a monetary order for unpaid utilities and for damage to the unit, site or property pursuant to section 67. The tenant applied for a monetary award of double her security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on December 5, 2012. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on February 22, 2013. The landlord confirmed that the tenant handed him a copy of her dispute resolution hearing package on March 9, 2013. He also testified that he was prepared to proceed with the consideration of both applications at this hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the tenant entitled to a monetary award for the return of any portion of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

This periodic tenancy commenced on December 1, 2011, on the basis of an oral agreement between the parties. According to the terms of their agreement, the tenant paid \$1,000.00 each month, comprised of \$900.00 for base rent and \$100.00 for utilities. The landlord testified that his actual utility costs exceed the \$100.00 he has been charging the tenant, but he agreed to subsidize the tenant's utility costs by only requiring her to pay \$100.00 towards her actual utility charges. The landlord continues to hold the tenant's \$450.00 security deposit paid on November 30, 2011. Pursuant to

section 51(1) of the *Act*, the landlord did not charge the tenant for rent during January 2013, the last month of this tenancy.

The effective date identified on the landlord's 2 Month Notice was January 31, 2013. I noted that the earliest possible effective date that the landlord could have identified on a 2 Month Notice served on December 6, 2012 would be February 28, 2013. Although the tenant testified that she vacated the rental unit on January 5, 2013, the landlord said that he did not anticipate her giving up the rental unit until January 31, 2013. The tenant entered into written evidence a copy of a February 1, 2013 letter that she did not hand to the landlord until February 6, 2013. In that letter, she noted that she was ready to transfer possession of the premises to the landlord on January 31, 2013. In her letter, the tenant stated that she had tried to contact the landlord by text and email in order to arrange a time to return the keys to the rental unit to the landlord. She also provided her forwarding address in that letter. The landlord said that he was working out of town at the time, but acknowledged receiving the keys to the rental unit and the tenant's forwarding address in writing on February 6, 2013.

The landlord testified that his representative walked through the premises with the tenant when she first took occupancy of the rental unit. However, he did not prepare a joint move-in condition inspection report. He confirmed that he did not conduct a joint move-out condition inspection, nor produce a report of his own inspection of the premises at the end of this tenancy. The tenant submitted her own move-out condition inspection report into written evidence.

The landlord applied for a monetary award of \$600.00. This amount was to reflect the landlord's claim that he should not be held responsible for "subsidizing" the last month of the tenant's utility bills. He maintained that the *Act* only requires him to forego charging the last month's rent to the tenant. He submitted into written evidence a copy of a BC Hydro bill for \$806.62, apparently covering the whole two-unit rental property from December 19, 2012 until February 20, 2013. He requested a monetary award of \$400.00 to cover the tenant's portion of this hydro bill. He also claimed for \$200.00 in cleaning costs for the estimated 4 hours of cleaning that he had to conduct at the end of this tenancy. He provided photographs of the yard and portions of the rental unit to demonstrate the garbage, debris and unclean condition of the premises at the end of this tenancy. He also gave undisputed testimony that the tenant damaged a wall when a child gate was installed in the rental unit and not repaired. He also said that there were minor damage and scrapes that were not repaired at the end of this tenancy.

The tenant applied for a return of double her security deposit as she maintained that the landlord has neither returned her security deposit in full nor applied for dispute

resolution to retain any portion of her deposit within 15 days of receiving her forwarding address in writing. Although the tenant noted \$450.00 as the amount of her requested monetary award in her application for dispute resolution, she also requested \$900.00 in total for double her security deposit in the Details of the Dispute section of her application. I am satisfied that both parties realized that the tenant was seeking a monetary award of \$900.00 in her application for a monetary award. As she did not identify her request for a return of her filing fee in her application for dispute resolution, I have not considered her oral request for recovery of her filing fee at the hearing.

Analysis – Landlord's Application

Section 51(1) of the *Act* reads as follows:

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.*

Based on the undisputed evidence before me, I find that the parties both agreed that the tenant's monthly payment comprised a \$900.00 portion for base rent and a \$100.00 portion for utilities. As outlined above, the landlord was required to allow the tenant an amount equivalent to one month's rent payable under the tenancy agreement. I am satisfied that the landlord has met that provision of section 51(1) of the *Act*.

In considering the landlord's application for a monetary award of \$400.00 for unpaid utilities for January 2013, I find that the utilities component of the tenant's total \$1,000.00 payment was separate from the provisions of section 51(1) of the *Act* which specifically refers only to rent payable under their agreement. Under the terms of the parties' oral agreement, the tenant had been paying \$100.00 towards the landlord's utilities' costs throughout the course of this tenancy. Whether the tenant actually vacated the rental unit on January 5, 2013, or remained in the rental unit after that date, the landlord only sought vacant possession of the rental unit by January 31, 2013. I find that the tenant remains responsible for the regular utility charges that had been applied for this tenancy for the month of January 2013. As such, I find that due to the nature of their agreement and their sworn testimony, the landlord is entitled to a monetary award for unpaid utilities in the amount of \$100.00, the amount that he had charged the tenant for the duration of this tenancy.

In reaching this decision, I find no merit to the landlord's claim that he could arbitrarily change the nature of the oral agreement by seeking full recovery of his utility costs in the last month of this tenancy. The *Act* does not allow a landlord to make arbitrary changes of this nature to the material terms of oral or written tenancy agreements.

When disputes arise as to the changes in condition between the start and end of a tenancy as is the case with respect to these applications, joint move-in condition inspections and inspection reports are very helpful. Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

While the landlord has not complied with the condition inspection provisions of the *Act*, section 37(2) of the *Act* also requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The tenant testified that some of the mess in the yard of the rental property may have been caused by the other tenant in this rental property. The landlord testified that the nature and location of the items shown in his photographs revealed that most if not all of the debris and garbage on the outside of the property was in fact caused by the tenant. The tenant did not dispute the landlord's claim that she did damage a wall when she installed and removed a child gate in the rental unit.

Based on a balance of probabilities, I find that the tenant did not leave the rental unit reasonably clean and undamaged except for reasonable wear and tear as required by section 37(2) of the *Act*. The landlord's photographs reveal that it likely did take the landlord the four hours he claimed to clean the rental premises and the outside of the property following this tenancy. I allow the landlord a monetary award of \$80.00 (i.e., 4 hours @ \$20.00 per hour) to clean the premises at the end of this tenancy. I also allow the landlord a monetary award of \$50.00 to repair the damage to the wall caused by the installation of the child gate.

Analysis – Tenant's Application

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the

tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing on February 6, 2013. Although the landlord applied for dispute resolution within 15 days of receiving the tenant's forwarding address in writing, there is no record that he applied for authorization to retain any portion of the tenant's security deposit in that application. The landlord has not obtained the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double her security deposit with interest calculated on the original amount only. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover double her security deposit, less the allowances provided to the landlord for unpaid utilities and damage to the rental premises:

Item	Amount
Return of Security Deposit	\$450.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	450.00
Less Unpaid Utilities	-100.00
Less Cleaning (4 hours @ \$20.00 = \$80.00)	-80.00
Less Damage Caused by Child Gate	-50.00
Total Monetary Order	\$670.00

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 15, 2013

Residential Tenancy Branch

