



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPB, MNSD, MNR, FF
 Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought a monetary order.

The hearing was conducted via teleconference and was attended by an agent for the landlord and the tenant and an occupant.

While the tenant had amended her Application for Dispute Resolution seeking to name another person as a tenant and another landlord I note that the tenancy agreement lists only one person as a tenant and through the evidence and references of both parties I find that there is only one landlord.

I note that throughout all of the material submitted by both parties there is only one person named as landlord and the other person is referred to as the landlord's spouse or partner. For these reasons I find that there was one tenant and one landlord that were a party to the tenancy agreement and as such I decline to amend the tenant's Application to name two tenants and two landlords.

At the outset of the hearing the parties confirmed the tenants had vacated the rental unit and as such there is no need for an order of possession as requested by the landlord. I amend the landlord's Application to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for utilities; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 38, 67, and 72 of the *Act*.

Background and Evidence

The parties provided into evidence the following documents:

- A copy of a tenancy agreement between the tenant and the landlord's agent signed on May 11, 2013 for a 1 year fixed term tenancy beginning on June 1, 2013 for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid. This agreement states the tenant is responsible for 33% of hydro and gas and \$20.00 for movie channels;
- A copy of a tenancy agreement between the tenant and the landlord signed on June 8, 2013 for a 1 year fixed term tenancy beginning on June 1, 2013 for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid. This agreement stipulates the tenant's internet and basic cable are including in the tenancy and the tenant is responsible for 33% of hydro and gas and \$30.00 plus tax for extra cable bundles; and
- A copy of a Mutual Agreement to End Tenancy signed by the parties on September 11, 2013 with an effective date of October 31, 2013.

The tenant submits that while there were many issues during the first part of the tenancy the issue that led the parties to signing the Mutual Agreement to end the tenancy occurred on September 11, 2013 after the landlord and her partner had an argument including the throwing and breaking of items inside the upstairs and out of the landlord's kitchen window directly above the tenant's window.

The tenant submits that they were on edge for the next couple of weeks and that they had tried to have discussions with the landlord's partner on resolving some of the financial matters between the parties.

In addition the tenant submits the landlord cut off access to the internet that was included in their tenancy agreement. The tenant provided the landlord with a letter advising her that she was in breach of the tenancy agreement. The letter goes on to say that if the issue is resolved immediately no further action would be taken through the Residential Tenancy Branch.

The tenant submits that after receiving no response from the landlord and "coupled with not knowing what another month of tenancy would entail" the tenants arranged alternate accommodation for the month of October 2013 and moved their belongings out on October 1, 2013.

The landlord submits she was unable to rent the unit for the month of October but on October 16, 2013 a new tenancy agreement was signed for a new tenancy beginning on November 1, 2013. The landlord seeks compensation for the lost revenue for the month of October 2013.

The landlord also seeks payment of hydro and gas in the amount of \$40.05. The landlord has submitted copies of bills for the utilities. The hydro bill is for the period June 20, 2013 to August 20, 2013 and the gas bill is for the period August 20, 2013 to September 19, 2013. The tenant submits she had paid these bills to the landlord but the landlord failed to issue receipts.

During the tenancy the tenant submits there were a number of deficiencies in the rental unit and they offered to purchase a new entry door, as they had planned to stay in the rental for a long term and least for the 1 year fixed term of the tenancy. The offer was accepted and the tenant installed the new door at a cost to them of \$252.43. As result of the end of the tenancy the tenant seeks to be reimbursed partially for the door recognizing that they had stayed in the unit for 4 months.

The tenant seeks the compensation for the loss of internet; the door replacement; and the costs of moving and storage resulting from having to vacate the rental unit early due to the landlord's actions in the amount of \$616.29 broken down as follows:

- Internet Replacement Value - \$128.74 – calculated in part by including set up fees and modem purchase;
- Prorated door replacement costs - \$168.32 – based on 8 months at \$21.04 per month;
- Moving and Storage costs - \$319.23 – rain protector; rental truck; 1 month storage.

The tenant also seeks to recover their security deposit and to recover the costs of their application and registered mail.

Analysis

Section 44 of the *Act* allows parties to a tenancy to end the tenancy by mutual agreement, as long as the agreement is in writing. I accept the parties to this tenancy entered into such an agreement on September 11, 2013 agreeing to end the tenancy on October 31, 2013.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

While I recognize the tenant did provide a letter to the landlord on September 28, 2013 advising her that she was in breach of the agreement by cutting off internet services I do not find that provision of internet services is a material term to this tenancy.

A material term of a tenancy agreement is a term that the parties agree at the start of the tenancy is so important to the contract that a single breach would warrant ending the tenancy. An example of a material term is the due date for the payment of rent.

In addition the tenant, in her submission indicates that another part of the reason they ended the tenancy earlier than the mutually agreed upon date was that they were not sure what they might be in for from the landlord's behaviour. However, if this was of such concern they should have obtained agreement to end the tenancy even earlier than what they themselves had agreed to with the landlord.

As such, I find the tenant breached Section 45 of the *Act* in unilaterally deciding to end the tenancy and vacating the rental unit. I also accept the landlord took reasonable steps to re-rent the unit and as such is entitled to compensation for the lost revenue suffered as a result of the tenants' early departure.

However, as the tenant disputes the landlord's claim for the cost of utilities, submitting that they had paid but that the landlord failed to provide receipts I find the landlord has failed to establish the tenant owes the landlord any amounts for utilities. I dismiss this portion of the landlord's Application.

In relation to the tenant's claims I make the following findings:

- Loss of Internet Services – I accept the landlord deliberately caused interference with the tenant's internet service and find the tenant is entitled to compensation for this disruption. However, I am not persuaded that she should be compensated for the costs of setting up a whole new account, especially since the tenancy was about to end. I find \$30.00 as compensation for the loss of this service to be reasonable;
- Door Replacement – I find that the issue of the door replacement is separate agreement that is more a contract for work or services than a part of the tenancy agreement. As such, I decline jurisdiction and dismiss this portion of the tenant's Application.
- Moving and Storage – as I have found that the tenant breached the tenancy agreement by leaving prior to the end of the mutually agreed upon end date I find the landlord cannot be held responsible for the costs associated with either moving or storage. I dismiss this portion of the tenant's claim.
- Registered Mail costs – As service methods are a choice made by the party to a dispute resolution process I find that it cannot be recovered by the claiming party and I dismiss this portion of the tenant's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$925.00** comprised of \$900.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application, as she was only partially successful in her claim.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$55.00** comprised of compensation for loss of internet service and \$25.00 of the \$50.00 fee paid by the tenant for this application, as she was only partially successful in her claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$450.00 and the \$55.00 awarded to the tenant above in partial satisfaction of this claim. I grant a monetary order in the amount of **\$420.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: January 30, 2014

Residential Tenancy Branch

