



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONNIEHON MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. In the Tenants' Application for Dispute Resolution, the Tenants sought a Monetary Order for return of double the security deposit paid to the Landlord. The Landlord, in their Application for Dispute Resolution, sought a Monetary Order for damage to the rental unit, unpaid rent, compensation for loss, to retain the security deposit and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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.

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

Issue(s) to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenants to return of double the security deposit?
2. Is the Landlord entitled to monetary compensation from the Tenants?
3. Should the Landlord recover the fee he paid to file the application?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement dated January 20, 2014 and which indicated the one year fixed term tenancy began on February 1, 2014 ending on January 31, 2015. The monthly rent was noted as \$850.00 and the Tenants paid the Landlord a security deposit of \$425.00 on or before the tenancy began on February 1, 2014.

Pursuant to clause 8 of the tenancy agreement, the Tenants were responsible for the cost of utilities except heat and hot water.

The Tenants testified that the Landlord performed an incoming condition inspection report and "everything was fine". A copy of the incoming condition inspection report was introduced in evidence. The Tenant testified that he did not have a copy of the report as the Landlord did not provide him with a copy.

The Tenants vacated the premises on August 31, 2014 and he testified that the tenancy ended because the Landlord demanded that he pay for electricity during a time when the unit was vacant. He stated that the Landlord brought him a bill for electricity charges from July 2013 to January 2014. The Tenant stated that the Landlord demanded that he pay the hydro bill and when he refused to pay for charges which related to a time period predating his tenancy, the Landlord asked him to move out.

Neither party submitted in evidence a formal Notice to End Tenancy, nor was there any indication that such a notice was issued by either the Landlord or Tenants.

The Tenant testified that he moved out on August 31, 2014 and that the Landlord re-rented the rental unit for September 1, 2014.

The Tenant further testified that he provided the Landlord with a written notice of his forwarding address to return the security deposit to by leaving a letter for the Landlord in the building manager's mail slot. Introduced in evidence by the Tenant was a letter dated August 31, 2014 wherein the Tenant simply asked the Landlord to call when the security deposit was ready to be picked up. The Tenant stated that he wrote another letter which specified his address; notably, that second letter was not in evidence.

The Tenant further testified that the Landlord attended at the rental unit for the outgoing condition inspection, confirmed that they were happy with the condition of the rental unit, yet did not complete a report.

The Tenant testified that the Landlord had yet to return his security deposit and as such, he seeks double the security deposit pursuant to section 38(6)(b).

The Landlord testified that the Tenants left the rental unit without giving proper notice, breached the fixed term tenancy, did not provide a forwarding address, and left the rental unit in such a state that repairs and cleaning were required. The Landlord testified that although they attempted to contact the Tenants by telephone, the Tenants would not answer the phone or return their calls. The Landlord claimed that in his calls to the Tenants he indicated he wanted to fill out the condition inspection report, yet the Tenants never responded. The Landlord confirmed that after a week, he completed the report in the absence of the Tenants as his

attempts to contact the Tenants were unsuccessful. The Landlord failed to introduce any evidence that they posted a notice to the rental unit door advising the Tenants of their desire to enter the rental unit for the purposes of performing the inspection.

Further, the Landlord claimed that it was only when the collection agency for the electricity account located the Tenants and the Tenants made this application, did the Landlord have notice of the Tenants' forwarding address. The Tenant made his application on October 20, 2014. The Landlords made theirs on November 4, 2014, within the time required by section 38(1)(b) and (d) of the *Act*.

In response to the Tenant's claim that the tenancy ended when he refused the Landlord's request that he pay for electricity for a time predating the rental period, the Property Manager, E.Y., stated this was incorrect. She testified that she spoke to B.C. Hydro and was informed that the outstanding accounts, which resulted in disconnection, related only to the time the Tenants were in occupation of the rental unit. She further testified that the Tenants should have been aware that the lack of power was due to their failure to pay. She denied the Tenant's claim that she told him he needed to move out.

The Landlord claimed compensation for the cost incurred to inspect the electricity problems in the rental unit in the summer of 2014. Specifically, the Landlord testified that in August of 2014, the Tenant contacted the Landlord as he did not have power in the rental unit. The Landlord hired an electrician to inspect the suite, and who in turn discovered that the power had been shut off due to the Tenant's non-payment of the hydro bill. The Landlord submitted in evidence an invoice from the electrician dated August 5, 2014 in the amount of \$255.94.

The Landlord also claimed the \$425.00 liquidated damages pursuant to clause 11 of the tenancy agreement due to the Tenants' breach of the fixed tenancy term.

The Landlord also sought compensation for the sum of \$850.00 for lost rent for the month of September, claiming the rental unit was not re-rented until October 2014. The Landlord failed to submit any evidence of their attempts to rent the rental unit in September of 2014.

The Landlord also claimed \$198.00 in suite damage/cleaning. The Landlord failed to submit any evidence which would support the claim for this sum of money.

As the parties achieved divided success, I decline the Landlord's request for return of the fee paid to file their application.

Analysis

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

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

Although the Landlord testified they attempted to reach the Tenants by telephone, the Landlord failed to introduce evidence which would show that they posted a notice to the rental unit door offering the Tenants two opportunities to inspect the rental unit as provided for in section 35(12) of the Act. By failing to perform the outgoing condition inspection report in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to 36(2) 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. Therefore, I find the Landlord has breached section 38 of the Act.

The security deposit is held in trust for the Tenants 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. If the Landlord and the Tenants are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims.

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 with 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.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$850.00**, comprised of double the security deposit (2 x \$450.00).

The tenancy agreement clearly indicated that the Tenants were responsible for utilities, save and except for heat and hot water. As such, I find that the Tenants should have known that the electrical problems in the summer of 2014 were a direct result of their failure to pay the electrical bill. Accordingly, and pursuant to section 67, I find that the Tenants should compensate the Landlord the sum of **\$255.94** for the cost of the electrical inspection.

I find that the Tenants breached the fixed tenancy term by ending the tenancy on August 31, 2014. Accordingly, I find that the Landlord is entitled to the sum of **\$425.00** as liquidated damages pursuant to clause 11 of the residential tenancy agreement.

The Landlord failed to introduce any evidence of their attempts to rent the rental unit for September 1, 2014. Pursuant to section 7(2) of the Act, the Landlord has a duty to mitigate any

loss claimed; as the Landlord has failed to satisfy me that they made such efforts, I dismiss their claim for lost rent for the month of September 2014.

The Landlord failed to introduce any photos, receipts or other evidence which would support their claim for reimbursement of the cost of cleaning/damage in the amount of \$198.00. Accordingly, I dismiss the Landlord's claim for this sum.

As I have granted the Tenants the sum of \$850.00 and the Landlord the sum of \$680.94, these sums shall be set off against one another such that the Tenant shall be entitled to recover \$169.06 from the Landlord. I hereby grant the Tenants a Monetary Order for this amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants are given a formal Order in the above terms 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: April 08, 2015

Residential Tenancy Branch

