



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities and lawyers charges; 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for return of double the amount of the security and pet damage deposits and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on November 22, 2014 for a month to month tenancy beginning on December 1, 2014 for a monthly rent of \$1,050.00 due on the last day of each month with a security deposit of \$525.00 paid.

The parties agreed the tenant also paid a pet damage deposit of \$150.00 during the tenancy and that the tenancy ended by August 31, 2015. The tenant testified she provided the landlord with her forwarding address on August 26, 2015, during the move out inspection. The landlord did not dispute this statement.

The landlord submitted that she was not able to file her Application for Dispute Resolution right away because her children had been sick and she had been trying to get a hold of her lawyer.

The parties agreed the tenant owes the landlord \$24.63 for water utility charges.

The landlord also seeks compensation in the amount of \$310.24 for charges she has incurred from her lawyer as a result of the tenant interacting with the lawyer despite repeated direction from the landlord to tenant to not contact the lawyer.

The tenant submitted that she had been instructed by the landlord at the start of the tenancy to provide post-dated cheques to the lawyer's office. She states that she only went to the lawyer's office on three occasions: to drop off her post-dated cheques; to drop off additional post-dated cheques and to hand in her notice to end the tenancy and collect her outstanding post-dated cheques. The tenant also acknowledges leaving a 37 second voice message with the landlord's lawyer.

The landlord has submitted, in support of her claim, an invoice totalling \$310.24 that lists the following charges:

Description	Hours
July 23, 2015 – communicate with landlord	0.50
August 9, 2015 – examine material on tenant moving out	0.10
August 21, 2015 – communicate with client re: several difficulties	0.10
August 21, 2015 – communicate with tenant	0.10
August 21, 2015 – telephone message for tenant to deal directly with landlord	0.10
August 21, 2015 – telephone attendance on landlord re tenant problem	0.20
Total	1.10 hours - \$277.00

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the testimony of both parties I accept that the tenant owes the landlord \$24.63 for unpaid water utility.

While I accept that the landlord advised the tenant to not deal with her lawyer's office I find that the landlord has failed to establish that this communication was a violation of the *Act*, regulation or tenancy agreement.

Further, even if the landlord had established a violation I note that the landlord has not provided any indication or evidence that she attempted to mitigate her damages or losses by advising her lawyer to not communicate with or spend any time on items dropped off or communicated by the tenant.

As a result, I find the landlord has failed to establish that she is entitled to recover these costs of \$310.24 from the tenant. I therefore dismiss this portion of the landlord's Application.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the testimony of both parties I find the landlord received the tenant's forwarding address on August 26, 2015 and the tenancy ended on August 31, 2015. As such, I find the landlord had until September 15, 2015 to file her Application for Dispute Resolution to claim against the deposits. The landlord filed her Application on September 23, 2015.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

While Section 66 does allow me to extend the timeframe I find the landlord has failed to provide any evidence to substantiate exceptional circumstances to grant an extension of the time to submit her Application.

As a result, I find the landlord has failed to comply with the requirements of Section 38(1) and the tenant is entitled to double the amount of the deposits, pursuant to Section 38(6).

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$49.63** comprised of \$24.63 water utility owed and \$25.00 of the \$50.00 fee paid by the landlord for her application as she was only partially successful.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,450.00** comprised of \$1,350.00 double the security and pet damage deposits and the \$100.00 fee paid by the tenant for her application.

I grant a monetary order to the tenant in the amount of **\$1,400.37**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: April 11, 2016

Residential Tenancy Branch