



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents and were prepared to deal with the matters of the applications.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement. Therefore, the following testimony was heard; evidence submitted by the parties was reviewed; and a Decision made by myself (the Arbitrator).

Issue(s) to be Decided

Should the full security deposit be returned to the tenant?

Is the tenant entitled to any monetary compensation for an aggravated medical condition?

Is the tenant entitled to recover the filing fee for her application?

Background and Evidence

This tenancy involves a lower unit in a home with two units. A copy of the tenancy agreement was submitted as evidence by the tenant. The fixed term tenancy began on November 15, 2017 becoming month to month at the end of the six month fixed term. Rent was set at \$1,250.00 per month. The tenancy agreement indicates that 35% of the hydro/electricity is to be paid by the tenant.

The parties agree that the landlord collected \$625.00 as a security deposit from the tenant at the commencement of the tenancy. The tenancy ended on January 31, 2019.

On February 9, 2019, the tenant received a cheque from the landlords in the amount of \$502.71, representing a return of the tenant's security deposit less \$122.29 retained for the remainder of the unpaid electricity bills. The tenant has not cashed this cheque to date. Whether the tenant is required to pay 50% or 35% of the hydro utility is the issue the parties disagree upon at this hearing.

The landlords testified that near the end of the tenancy, the hydro consumption in the home went "crazy", causing them to advise the tenant they were going to install a subpanel so each unit could determine how much each party should pay. The tenant did not want the subpanel installed, but instead she verbally agreed to pay 50% of the hydro rather than the 35% as agreed to on the tenancy agreement. The landlords submit that they enjoyed an amicable, friendly relationship with the tenant and therefore did not get the agreement to change the percentage of paying hydro with the tenant in writing. The landlords allege the tenant's boyfriend was staying with the tenant near the end of the tenancy causing the amount of hydro used in the house to go up, however this is disputed by the tenant.

The tenant testified that she did not have agreement with the landlords, verbal or otherwise, to change the terms of the tenancy agreement to reflect she is to pay 50% of the hydro rather than 35%. She denies her boyfriend was occupying the rental unit with her, causing the hydro to spike. The tenant testified she paid \$237.75 to the landlord as 35% of the \$679.28 hydro bill and provided a copy of her e-transfer verification and a copy of the hydro bill as evidence. The tenant submits that she is fully paid up for her hydro to the landlords.

The tenant testified that due to the landlords not returning her full security deposit, she has been suffering from flareups of an existing medical condition brought on by stress. The tenant has filed a report from her doctor to corroborate this. To compensate, the tenant submits that the landlord should award her with a doubling of her security deposit.

Analysis

- Tenant's claim for doubling of the security deposit for aggravated medical condition

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, 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.

While the tenant may have a pre-existing condition that is aggravated by stress, she has not satisfied me of a direct causation linking the dispute resolution proceedings that she initiated to her medical condition. The letter from the tenant's doctor is not persuasive to me in corroborating the tenant's claim to double the security deposit. While her doctor has observed the tenant's medical condition is flaring up, I am not satisfied he can pinpoint the tenant's flareups to this conflict rather than any other aspect of the tenant's life. In light of this, the tenant has not satisfied me that any stress she has suffered was brought about by any violation of the *Act*, regulations or tenancy agreement caused by the landlords. This portion of the tenant's claim is dismissed.

- Tenant's claim for full return of her security deposit

Both parties provided equally plausible accounts of events or circumstances related to this dispute. Whereas the landlords submit the tenant agreed to pay 50% of the hydro bill, they acknowledge they did not get the agreement in writing. In the absence of any written document to the contrary, I must turn to the only document in evidence that indicates the percentage of hydro to be paid, the tenancy agreement. As the tenancy agreement states the tenant is to pay 35% of the hydro, I find the tenant has fulfilled her obligation to pay her hydro bill in accordance with the tenancy agreement. The tenant is entitled to a full return of her security deposit in the amount of \$625.00 and I issue a monetary order in the tenant's favour for that amount.

The tenant was only partially successful in her claim. I decline to award the filing fee in accordance with section 72 of the *Act*.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$625.00.

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: June 27, 2019

Residential Tenancy Branch