



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND, MNR, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, unpaid rent and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the landlord has established that the tenant damaged the rental unit and if so, the quantum of the damage.
2. Whether the landlord has established that the tenant owed rent for the month of October 2008.
3. Award of the filing fee.

Background and Evidence

From the undisputed testimony from the parties I make the following findings regarding the tenancy. The tenancy commenced in September approximately three or four years ago. There was no security deposit collected and no written tenancy agreement. Condition inspection reports were not prepared by the landlord. The monthly rent was \$500.00. The tenant also worked for the landlord and the rent was deducted from the tenant's paycheque at the end of every month. At the end of September 2008 the tenant quit the job; however, he remained in the rental unit until October 31, 2008. The

last rent payment collected by the landlord was taken from the tenant's last paycheque in September 2008.

The landlord submitted that deductions for rent pertained to the month in which it was taken and that it was not taken in advance. In other words, the landlord was of the position that the rent deduction taken from the tenant's last paycheque in September 2008 related to rent owing for September 2008. The landlord explained that the rent charged by the landlord was approximately one-half of the market rent since the landlord considered the tenant a friend and wished he could pay the tenant more wages. The landlord is claiming unpaid rent of \$500.00 for the month of October 2008.

The tenant submitted that the rent deductions applied to the upcoming month as rent is normally paid in advance. In other words, the tenant was of the position that the rent deduction taken off his last paycheque in September 2008 applied to rent owing for October 2008. The tenant further explained that when he moved into the rental unit in September, three or four years ago, he moved-in in the latter part of the month and that other people were also residing in the rental unit. The tenant was of the belief that the rent deduction taken that first month of occupation was for the upcoming month of October and that the rent deductions continued on the basis.

In addition to unpaid rent, the landlord is claiming damages as follows:

Missing fridge (approximate replacement cost)	\$ 750.00
Carpets (approximate replacement cost)	\$ 2,500.00
Clean-up costs	\$ 250.00

The landlord did not submit payroll statements, invoices or quotes in support of the above amounts and requested an adjournment. The landlord's request for an adjournment was not granted as the landlord initiated this application nearly six weeks prior and had not used that time to provide relevant evidence in support of the amounts

claimed. The landlord had submitted photographs of the rental unit taken at the end of the tenancy for the hearing and those were accepted in to evidence. The hearing proceeded based on the verbal testimony of both parties and the evidence before me at the time of the hearing.

With respect to the fridge, the landlord claimed that an older model fridge that was in working condition was provided with the rental unit and that it was subsequently removed by the tenant. The landlord explained that since the fridge was working when the tenancy began the landlord feels entitled to a replacement fridge and estimated that cost to be \$750.00. The tenant testified that the fridge was not working properly and that it was stored in the carport and he borrowed another fridge which was returned to that person when he moved out. The tenant described the landlord's fridge as at least 10 years old and green in colour. The tenant does not know what happened to the fridge after it was stored in the carport.

With respect to the carpets, the parties were in agreement that the tenant had removed the carpets. The landlord testified that the carpets in the rental unit were approximately 8 or 9 years old and that replacement of the carpets would cost approximately \$2,500.00. The tenant testified that the previous occupants of the rental unit had a marijuana grow operation and dogs in the rental unit and that the carpets were in very poor condition and smelled mouldy. Rather than carpeting, the tenant lived with bare plywood floors since January 2008. The tenant testified that the landlord knew that the tenant was going to remove the carpets. The landlord denied consenting to the removal of the carpets.

The landlord claimed that several trips to the dump had to be made to remove the tenant's garbage, costing the landlord approximately \$250.00. The tenant denied that the garbage was his and asserted that it was there when he moved in.

Analysis

The Act requires that a tenancy agreement be in writing. The landlord is responsible for preparing the tenancy agreement for signature by both parties. Among other things, the Act requires that a tenancy agreement set out the terms agreed to by the parties with respect to the date the tenancy starts, whether the tenancy is on a weekly, monthly or some other periodic basis, the amount of rent payable for a specified period and the day in the period on which the rent is due. Although the parties had a more friendly and casual acquaintance at the beginning of the tenancy, I find the landlord failed to comply with the requirements of the Act with respect to preparing a written tenancy agreement. Nonetheless, oral terms contained in verbal tenancy agreements may still be recognized and enforced as the Act recognizes tenancy agreements that are not written.

Where verbal terms are clear and in situations where both the landlord and tenant agree, there is no reason why such terms can not be enforced, unless those terms violate the Act or regulations. That being said, it is evident that, in relying on memory alone, the parties may end up interpreting verbal terms in drastically different ways. Where certain issues and expectations are verbally established between the parties, these terms are always at risk of being perceived in a subjective way by each individual. Obviously, by their nature, verbal terms are virtually impossible for a third party to interpret in order to resolve disputes as they arise.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

With respect to rental period and the timing of rent payments, I am unable to determine conclusively the terms agreed upon between the parties at the commencement of the tenancy. When I consider that the tenant moved in to the rental unit when other people were living there and the tenant moved in later in the month, I find the tenant's explanation probable. When I consider the landlord's explanation that the tenant did not have money to pay rent initially and that in recognition of his status as an employee where rent could be taken off his paycheques after the fact, I also find that explanation probable. I do not have sufficient evidence to find one explanation more probable than the other explanation. Therefore, I find the explanations provided by both parties to be equally probable. Since the landlord has the burden to prove the claim, the landlord has failed to meet that onus and the claim for unpaid rent fails.

Similarly, with respect to the garbage removal, without some form of evidence to substantiate the garbage was not at the rental unit at the beginning of the tenancy, as claimed by the tenant, the landlord's allegations that the garbage was that of the tenant do not meet the burden of proof and the landlord's claim for garbage removal is denied.

With respect to damages, an award made to a party for damages is intended to place the party in the same position they were in immediately prior to the damage or loss. Where an existing furnishing or fixture must be replaced, the normal measure of damage is the replacement cost, less depreciation. To award a landlord replacement cost without taking into account the depreciation of the replaced item, the landlord would be unjustly enriched as the landlord would receive the benefit of many more useful years of the item replaced at the tenant's expense. To determine the normal useful life of an item, I have used Residential Tenancy Policy Guideline 37. According to the policy guideline, a fridge has a useful life of 15 years. From the testimony of the parties at the hearing, I am satisfied that the fridge was more likely than not to be at least 15 years old at the end of the tenancy. Therefore, even if I found the tenant responsible for disposing of the fridge, a reasonable measure of damage or loss

incurred by the landlord is nil and I make no award to the landlord for the loss of the old fridge.

With respect to carpets, the policy guideline provides that carpets have a normal useful life of 10 years. Although the landlord testified that the carpets were 8 to 9 years old, where carpets are exposed to pets and moisture, the condition of the carpets deteriorate more quickly. The tenant alleged that the carpets were in poor condition when he moved in due to pets and marijuana being grown by former occupants. The landlord did not provide evidence, such as a move-in inspection report, to substantiate the condition of the carpets at the beginning of the tenancy. I am satisfied that it is reasonably likely that the carpets would have to be replaced even if the tenant had left the old carpets in place. Therefore, I find that the landlord has not substantiated that the removal of the carpets left the landlord to be in a position that was worse than had the carpets remained in place. Even if I had found the tenant responsible for damaging the carpets, the landlord failed to substantiate the replacement cost of the carpets.

In summary, the landlord failed to meet the burden to prove the landlord's claims against the tenant and the landlord's application is dismissed without leave to reapply. I make no award for recovery of the filing fee from the tenant.

Conclusion

The landlord's application is dismissed in its entirety.

December 30, 2008

Date of Decision

Dispute Resolution Officer