



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing was reconvened following an earlier hearing held on January 29, 2009. Arising from the previous hearing a decision and monetary order were issued on January 30, 2009. Subsequently, the tenant applied for a review of the decision and monetary order on the basis that she was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond her control. As the tenant's application succeeded, the decision and monetary order dated January 30, 2009 were suspended pending the reconvening of the hearing.

This reconvened hearing dealt with an application from the landlords for a monetary order as compensation for loss of rental income, costs associated with cleaning, painting, repair and refuse disposal, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee for this application. The landlords withdrew their earlier claim of \$60.00 for replacement of a missing baby gate, as this item was recovered subsequent to their original application. Both parties participated in the hearing and gave affirmed testimony.

Issue to be Decided

- Whether the landlords are entitled to a monetary order under the Act

Background and Evidence

While this decision does not make specific reference to each and every detail of documentary evidence or testimony, all documentary evidence and testimony provided by the parties was carefully considered.

The parties agree that pursuant to a written residential tenancy agreement, the month-to-month tenancy began on March 15, 2008. Rent in the amount of \$850.00 was payable in advance on the first day of each month, and a security deposit of \$425.00 was collected at the start of tenancy.

Further, the parties agree that on November 2, 2008, the tenant gave verbal notice of her intent to vacate the unit at the end of November. Following this, the tenant provided the landlords with written notice of her intent by letter dated November 4, 2008. Rent was paid in full to the end of November 2008, and the tenant vacated the unit on or about November 30, 2008. While the tenant left the keys in the unit she did not inform the landlords of a forwarding address. In spite of advertising, the landlords were unable to find new tenants for December 2008.

By way of their signatures on a rental agreement, the parties agreed that at the outset of tenancy the unit was in "excellent condition." Pursuant to this document the parties also agreed that at the end of tenancy the unit would be left "perfectly clean." Pictures submitted into evidence by the landlords show a unit in need of cleaning, in addition to some painting and repair following the tenant's departure. While the tenant stated she was "in a rush" at the end of tenancy, she maintains that she not only cleaned the carpet but undertook some surface cleaning in the unit prior to leaving. As the tenant's whereabouts was unknown, the landlords were unable to offer her an opportunity to participate in a move-out condition inspection of the unit at the end of tenancy.

In part as a response to the landlords' claim that disposal of certain things was necessary after the tenant's departure, the tenant asserts that some things were left behind as she thought they may be of use to the landlords.

The tenant sought compensatory consideration for such things as an outdoor umbrella which she claims was improperly taken over by the landlords, in addition to cost incurred for curtains she installed in the unit during her tenancy, as well as for inconvenience and distress resulting from an allegedly malfunctioning water pump.

Analysis

In addition to considering the relevant legislation, in order to decide the issues I have carefully weighed the documentary evidence and testimony of the parties. A test for assessing credibility is set out in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357 (B.C.C.A). In part, the test reads as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Section 45 of the *Act* addresses **Tenant's notice**, in part, as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In the circumstances of this dispute, the tenant has not complied with the above statutory provisions in her manner of giving notice. I therefore find in favour of the landlords in regard to their claim for loss of rental income in the amount of \$850.00 for December 2008.

While both parties claim costs arising from carpet cleaning, neither party has submitted receipts. I therefore accept the landlords' claim for cost of \$132.50, and I accept the tenant's claim for cost of \$40.00, While I am inclined to prefer the testimony of the landlords in this matter, I provide the tenant with some benefit of any doubt and find the landlords are entitled to recovery of the difference which is \$92.50 (\$132.50 - \$40.00).

As for cleaning in the unit following the end of tenancy, on balance, I prefer the testimony of the landlords that additional cleaning was necessary. Accordingly, I find that the landlords are entitled to recovery of the costs claimed of \$160.00.

With reference to painting, repairs and disposal of certain items left behind by the tenant, I note once again her assertion that she was in a rush. On balance, and in view especially of photos submitted by the landlords, I prefer the evidence of the landlords. In the result, I find that they are entitled to recovery of costs claimed for minor repairs, painting, disposal and dumping fees in the total amount of \$150.00.

Having considered the testimony from both parties, I am persuaded that the outdoor umbrella was originally discarded by the tenant and that she was subsequently at liberty to reclaim it if she so desired. Further, I am satisfied that it was the tenant's decision to purchase curtains, and that she made no request of the landlords to provide these or reimburse her for her purchase. Finally, there is no evidence that any of the tenant's concerns related to the water supply resulted in her application for an order instructing the landlord to make necessary repairs during the tenancy, and there is presently no application from the tenant for a monetary order as compensation before me; further, whether it was the pump or the switch, as the landlords claim, I am satisfied that the landlords did not delay in responding to any report associated with the water supply when informed by the tenant.

As for a monetary order, based on the documentary evidence and testimony of the parties, I find the landlords have established a claim for \$1,302.50, comprised, in summary, as follows:

\$ 850.00	loss of rental income for December 2008
\$ 92.50	carpet cleaning
\$ 160.00	cleaning in the unit (8 hours x \$20.00/hour)
\$ 150.00	repairs, painting, disposal & dumping fees
<u>\$ 50.00</u>	filing fee for this application

Total: \$1,302.50

I order that the landlord retain the security deposit of \$425.00 plus interest of \$5.09, and I grant the landlords a monetary order under section 67 of the *Act* for the balance due of \$872.41 (\$1,302.50 – \$430.09).

Conclusion

I hereby grant the landlords a monetary order under section 67 of the *Act* for **\$872.41**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: May 15, 2009

Dispute Resolution Officer