

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The tenant has applied for the return of her security deposit and compensation for damage or loss under the Act. The landlord has applied for a monetary order to keep the security deposit, unpaid rent, damage to the rental unit and for compensation for damage or loss under the Act.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary Order for unpaid rent; for all or part of the security deposit; for damage to the rental unit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 26, 38, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary Order for compensation for damage or loss under the act; for all or part of the security deposit, pursuant to sections 26, 38, 44, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A document entitled "Submissions of the Landlord" outlying her recollection of key facts in the dispute;
- A document entitled "Computation of Damage" and has included invoices and receipts from several contractors and suppliers and several photographs of the condition of key locations in the rental unit;
- A document entitled "Things I have done for [the tenant]";
- A copy of a residential tenancy agreement signed by the parties on January 13, 2009 for a one year fixed term tenancy beginning on January 15, 2009 for a monthly rent for \$850.00 due on the 1st of the month. A security deposit of \$425.00 was paid on January 13, 2009. The tenancy agreement also included two clauses initialled by the landlord's agent and by the tenant indicating that no alterations of any kind would be made inside or outside and no changes of keys or security codes.

- A copy of a Condition Inspection Report signed by the landlord's agent for both move-in and move-out inspections and by the tenant for the move in inspection and by the tenant's agent upon move out. The report indicates that there is a missing broiler pan; several scrapes on the floor in the living room; minor wear and tear on the dining room floor and a broken floor register. There is no date of the move out inspection on this report.
- Copies of emails between the property manager and the tenant and between the property manager and the landlord;
- Letters from the RCMP regarding an information access request about break ins at an unspecified address;
- Several statements from several third parties, some related to the tenancy and some related to the longer term friendship of the parties;
- A telephone bill for the landlord for the period July 13, 2009 to September 6, 2009; and
- A copy of an application for tenancy dated November 1, 2009 by another party for the dispute address.

The tenant submitted the following documentary evidence:

- A document entitled "Landlord – Dispute – Loss of Quiet Enjoyment of Residency" summarizing the tenant's recollection of events of the tenancy;
- Receipts from the tenants new landlord for rent and for security deposit and for a pet damage deposit;
- Typewritten notes from a person named Kim;
- Email between the property manager and the tenant regarding the move out inspection;
- A notice of intention to enter residential premises dated August 18, 2009;
- A document entitled "Addendum to Dispute" outlining the tenant's monetary claim;
- A copy of a Condition Inspection Report signed by the landlord's agent for both move-in and move-out inspections and by the tenant for the move in inspection and by the tenant's agent upon move out. The report indicates that there is a missing broiler pan; several scrapes on the floor in the living room; minor wear and tear on the dining room floor and a broken floor register. This document is dated September 3, 2009;
- Several photographs of the rental unit, including the yard; and
- A written statement from the tenant's witness who appeared at the hearing.

In the tenant's application she indicates that the owner stated it was in the tenant's best interested to vacate the premises – that it was not working for the landlord. The tenant took this to mean that the landlord was issuing her a notice to end the tenancy. The tenant also claims in her application that she is disputing the loss of quiet enjoyment of life, privacy and harassment, along with monetary damages.

The tenant has not provided a value for her claim for loss of quiet enjoyment, privacy and harassment.

The tenant's full monetary claim is as follows:

Description	Amount
Rent at the tenant's new address	\$2,800.00
Damage Deposit at the tenant's new address	\$560.00
Moving Expenses	\$200.00
Storage Expenses	\$367.50
Total	\$3,927.50

In the hearing, the tenant's testimony indicated the harassment was in the form of the landlord coming to the property without adequate notice, having a neighbour watching her and several phone calls, particularly when the tenant was out of the province on vacation.

The tenant's witness provided testimony confirming the tenant received a number of phone calls from the landlord during the vacation. Between the tenant and her witness they indicated there were at least 4 or 5 calls. In addition their testimony indicated that there were calls every 5 to 10 minutes for 4 days.

In her application the landlord is claiming for lost rent and for damage to the rental unit for changing the wiring and putting holes in the flooring. The landlord is also claiming for the costs of cleaning and for advertising the rental unit and property.

The landlord's total monetary claim is as follows:

Description	Amount
Lost Rent – originally for 5 months but adjusted to 2 months	\$1,700.00
Insurance for vacant premises	\$75.00
Advertising and showing	\$258.76
Unpaid utility bill	\$117.98
Cleaning house, yard and dump charges, furnace and duct cleaning	\$734.32
Replace/repair – shower head, 2 heat registers, electrical, range hood filter (stove filter), broiler pan, landscape tie, stain on linoleum	\$455.42
Total	\$3,341.48

The landlord testified that she at no time issued a notice to end the tenancy and as such the tenant should be responsible for rent until the end of the fixed term. The landlord has provided confirmation that the rental unit has been re-rented, effective November 1, 2009 and as such has reflected this in her evidence.

The landlord is also claiming that as a result of ending the tenancy earlier than the fixed term she incurred additional costs to re-advertise and show the rental unit. She also

states she has incurred additional costs for cleaning and damage to the rental unit because of the tenant rewiring and putting holes in the floors and some other minor damage.

Analysis

Section 44 of the *Act* states that a fixed term tenancy ends if the tenancy agreement provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

A landlord may end a fixed term tenancy only if the tenant fails to pay the rent or if the landlord can show cause as outlined in Section 47 of the *Act*. In both cases, the form and content of the notices to end tenancy must comply with Section 52 which states that the notice must be in writing, signed and dated by the landlord, provide the address, the effective date and the grounds and be in the approved form.

Section 45 of the *Act* states that a tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement, once the tenant has given notice of their intent to end the tenancy at that time.

From the testimony of the tenant and her witness, the landlord stated that the tenant should look for a new place to live. This is clearly not written notice nor does it provide the required elements under Section 52.

I therefore find the landlord did not give the tenant Notice to End the Tenancy and the tenant would be liable for rent until the end of the fixed term tenancy. As the landlord has rented the property out as of November 1, 2009, I find the tenant's liability is limited to September and October 2009, in the amount of \$1,700.00. I also find the tenant is responsible for the unpaid utilities of \$117.98 as claimed by the landlord.

As a result of my finding that no notice to end the tenancy prior to the end of the fixed term I dismiss the tenant's application for rent for her new rental unit; damage deposit for her new rental unit; moving costs; and storage costs or the tenant's total monetary claim of \$3,927.50.

As to the tenant's claims of harassment, she has failed to provide any evidence of such a claim. Even in regards to the harassing phone calls while on vacation. The tenant and her witness first say the landlord called 4 or 5 times and then stated that she called every 5 to 10 minutes for 4 solid days.

I find the discrepancy between 4 or 5 times and 6 calls per hour for 4 days to be a substantial incongruence in the testimony of the tenant and her witness and therefore, I dismiss the tenant's claims for loss of quiet enjoyment in their entirety. As the tenant has not been successful in her application, I dismiss her application for recovery of her filing fee.

As the tenancy agreement between the parties indicated that at the end of the fixed term the tenancy could continue as a month to month tenancy, I find the landlord's intent was to continue the tenancy beyond the fixed term, as such I find the landlord is entitled to the costs associated with insuring and re-renting the property at this time, in the amount of \$333.76.

In relation to the landlord's claim for cleaning the furnace and duct work, in the amount of \$188.98 the Residential Tenancy Policy Guidelines state that it is the responsibility of the landlord to replace furnace filters, cleaning ducts and service furnaces in rental properties. I dismiss this portion of the landlord's claim.

In relation to the costs for cleaning, replacement or repairs to the rental unit and property I am guided primarily by the Condition Inspection Report which indicates only that one heat register is damaged; a broiler pan is missing; and the range hood filter requires replacement.

The main purpose of Condition Inspection Reports is to have a before and after occupancy comparison of the condition of the rental unit. The landlord's agent performed the incoming and outgoing reports and noted no differences. Tenants are entitled to rely on these reports and it is not open to the landlord to attempt to circumvent the reports prepared by her agent, and now claim damages which were not evident to the agent or the tenant's agent, or indicated in the condition reports.

I therefore find the landlord is entitled to \$39.94. I dismiss the remainder of the landlord's claim.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,241.68** comprised of \$2,191.68 rent and utilities owed; advertising and showing; damages; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$425.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,816.68**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and 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: December 21, 2009.

Dispute Resolution Officer