



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord - MND, MNR, MNSD, MNDC, FF

For the tenant – MNDC, O, FF, (MNSD)

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The landlord seeks a Monetary Order for damages to the unit, for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement, for unpaid rent and to recover the filing fee paid for this application. The landlord has also requested to keep the tenants security deposit. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement and to recover the filing fee paid for this application. The tenant has other issues and has amended her application for the return of her security deposit.

Both Parties served the other Party by registered mail with a copy of their Application and Notice of Hearing. I find that both Parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. Both Parties also confirm receipt of additional evidence sent by the other Party.

Both Parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all submissions. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

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- Has the landlord established a monetary claim due to the loss of rent, damage to the rental unit and compensation for damage or loss under the Act?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Is either Party entitled to recover filing fees from the other Party for the cost of the applications?
- Is the tenant entitled to compensation for damage or loss under the Act?
- Is the tenant entitled to receive double the security deposit back?

Background and Evidence

This tenancy started on April 01, 2006 and ended on July 01, 2009. The tenant paid rent of \$1,000.00 per month for this rental unit and a security deposit of \$500.00 was paid on April 03, 2006.

The landlord claims the tenant left the rental unit and did not give him One Months Notice to End Tenancy. The landlord received a letter in his mail box from the tenant dated June 28, 2009. This letter stated that the tenant had ended the tenancy and moved from the rental unit. The landlord seeks a loss of Revenue for July of \$1,000.00

The landlord claims that the tenant painted her rental unit without written consent from the landlord and he has incurred costs of \$1,100.00 to repaint the unit. The landlord also claims the tenant did not return the mail box key and he incurred costs of \$40.81 to rekey the lock. The landlord has requested to keep the tenants security deposit in partial satisfaction of his claim. The landlord has produced a move in condition inspection report and claims that he was unable to conduct a move out condition inspection as he was unaware that the tenant had moved out until after she had left the rental unit.

The tenant agrees that she did end the tenancy without providing the landlord with one months notice. She claims that the landlord breached a material term of the tenancy agreement. The tenant claims that her main source of income came from decorating the landlords' properties. On June 19, 2009 the tenant claims that the landlord asked her to meet him in his apartment (located in the same building) to discuss doing some painting and management work for the landlord. When she arrived at the landlords' apartment an incident took place where the tenant alleges the landlord engaged in a

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sexual act with himself which made the tenant feel uncomfortable and nervous. The tenant left the landlords apartment and was very upset, she claims she felt threatened and intimidated by the landlords' actions. The tenant contacted the police who came to interview her. The tenant has provided copies of her statement to the police and the police reports concerning this alleged incident.

The tenant claims the police attempted to contact the landlord but he would not answer his door. The tenant also contacted the building manager who came to her unit because she was very upset. The tenant decided she could no longer continue to live at the rental unit as she had concerns about the landlord living in the same building and having access to her unit. She states as she felt unsafe and intimidated she decided to move from the property and sent the landlord a letter stating her intention.

The tenant claims the property manager at the time gave her verbal permission to paint her unit and the move in condition inspection report indicates that the bathroom required painting. The tenant disputes the landlords' costs for re-painting the suite. She claims that when she was employed by the landlord to decorate his suites she would have been paid \$450.00 to paint a one bedroom apartment. The tenant does not dispute that she did not return the mailbox key.

The tenant seeks a Monetary Order to recover her moving costs of \$960.00, costs for three ferry trips of \$152.70 and costs for storage of \$726.00. The tenant seeks compensation for stress with regard to the landlords' alleged actions on June 19, 2009. The tenant also seeks the return of her security deposit as she gave the landlord her forwarding address in her letter dated June 28, 2009. The tenant also claims that the landlord did not contact her to attend a move out condition inspection.

The tenants' witness who was the property manager during the tenancy testifies that he did give the tenant verbal permission to repaint the rental unit as it had not been painted before she moved in. The witness testifies that on the night of the alleged incident the tenant called him and he went to her unit. When he arrived she was very upset and was crying. She had some other tenants there supporting her. She told him what had allegedly happened at the landlords' apartment and when the police arrived he left her unit so they could take evidence from her. The witness also testifies that the

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landlord did not want him to do a move out condition inspection report after the tenant left the rental unit.

The landlord cross examined this witness and asked the witness if the landlord had had any direct contact with this tenant. The witness stated that the landlord had hired her and did have some contact with her. The landlord also asked the witness if he had ever been into any tenants units. The witness stated "not that he knew of".

The landlord denies the tenant allegations which he claims are false and unfounded. The landlord claims the police have never contacted him and no charges have been brought against him. He claims he was unaware of any police investigation into this alleged incident. He claims the tenants allegations are based on a financial motive to avoid paying rent for July, 2009. The landlord argues that in the police report the tenant states that she will take civil action against the landlord. However, she has not taken any action against him and she has no proof to substantiate her allegations.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. While I find that the tenants claim may have some merit, the burden of proof lays with the tenant to substantiate her claim that the incident took place in the landlords apartment and due to this the tenant had a right to end her tenancy because the landlord breached a material term of the tenancy pursuant to s. 6 of the Residential Tenancy Policy Guidelines (Right to Quiet Enjoyment).

I find the tenant has produced the police report and copies of her statement to the police; however, there is no further evidence of any police action or investigation of this incident. I find therefore that without any additional corroborating evidence to prove that this incident took place that the tenant has not satisfied the burden of prove and her application for money owed or compensation for damage or loss is dismissed without leave to reapply.

With regards to the landlords claim for damage to the rental unit I find that although the tenancy agreement does specify that the tenant must get written permission from the landlord to paint the rental unit she did get verbal permission from the property manager to paint the unit and relied on

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this permission to go ahead and paint the unit. As the tenant was employed by the landlord as a painter and decorator at the time I would assume that she did a professional job in painting the suite. I therefore dismiss this section of the landlords' application without leave to reapply.

With regards to the landlords' application for unpaid rent for July, 2009, I find the landlord has not shown any steps taken to mitigate his loss of rent for July by attempting to re-rent the unit before the end of July. I find it hard to believe that it would have taken the landlord one month to re-paint a one bedroom unit and therefore dismiss this section of the landlords' application without leave to reapply.

With regard to the landlords claim that the tenant did not return the mail box key, the tenant does not dispute this and therefore I find the landlord is entitled to be reimbursed for this cost of **\$40.81** from the tenant

With regard to both applications to keep the security deposit I find the landlord did not conduct a move out condition inspection and despite having the tenants forwarding address in writing did not make any attempt to contact the tenant to arrange a convenient time to do the move out condition inspection as soon as he was aware that she had moved from the rental unit. Sections 35(3) and 35(5) of the Act require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenant moved out, I find the landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit is extinguished.

In this event the tenant is entitled to double the return of her security deposit pursuant to s. 38(6)(b) to the amount of \$1,000.00 plus accrued interest of \$17.05 on the original security deposit of \$500.00. As both parties have only been marginally successful with their claim I Order them both to bear the cost of filing their own application.

A Monetary Order has been issued to the tenant for the following amount:

Double the security deposit	\$1,000.00
Less amount owed to the landlord for mail box key	(-\$40.81)



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Total amount owed to the tenant	\$976.24
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Conclusion

I HEREBY FIND in partial favour of the landlords' monetary claim. The amount of **\$40.81** has been offset against the amount owed by the landlord to the tenant.

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$976.24**. The order must be served on the landlord and is enforceable through the Provincial Court 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: January 11, 2010.

Dispute Resolution Officer