



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

Landlord: MND, MNR, MNSD, MNDC, FF
Tenant: MNDC

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all or part of the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The parties each gave affirmed evidence and were given the opportunity to cross examine each other on their evidence. The tenant was assisted by another party, and the tenant called a witness who also gave affirmed evidence and was subject to cross examination by the landlord.

Issues(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on February 1, 2008 and ended on February 1, 2010. Rent in the amount of \$725.00 was payable on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$350.00.

The landlord testified that the tenant did not pay rent for the months of November and December, 2009 or for January, 2010. The matter of unpaid rent for November and December was dealt with by way of dispute resolution on December 18, 2009, as well as the security deposit, and the landlord has a monetary order in the amount of \$370.15.

The landlord provided proof of service of having served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 7, 2010 by posting it to the door of the tenant's residence. A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was provided in advance of the hearing, however it is dated January 17, 2010 and states that the tenant has failed to pay rent in the amount of \$2,175.00 that was due on January 1, 2010 and that the expected move-out date is January 17, 2010 – the same day that it was issued.

The landlord further testified that the tenant moved out of the residence, but is not sure of the date. He believes it was at least a week after February 1, 2010. The tenant testified that she moved from the unit on February 1, 2010.

The tenant acknowledges owing \$725.00 for rent for January, 2010.

The tenant is applying for damages in the amount of \$400.00, which she and her witness testified is equal to \$7.00 for 3 or 4 loads of laundry every 10 days for 1 ½ years. The tenancy agreement states that laundry is included, and she thought it was free, but turned out to be coin operated machines. When questioned about seeing the laundry room when she first viewed the suite, the tenant testified that she was not told that the machines were coin operated. She was shown where the laundry room was, and was told that the room was kept locked, but there was no mention of coin operated machines. The tenant further testified that she had to get an employee of the landlord to open the door to the laundry room each time she used it. The tenant was never provided a key to that laundry room, which was also used for storage and for the landlord's office. She testified that the employee with the key was not always home, had no cell phone, and it was very inconvenient to attempt to locate him when the tenant wanted to do laundry.

The landlord testified that the laundry room is locked up at night and is available from 9:00 a.m. to 4:00 p.m. most days however the tenant disputes that fact. The landlord further testified that he has never had any complaints from other tenants about it.

The landlord testified that the tenancy agreement prepared was a pre-printed form that had the word "free" beside "laundry" in the area that shows what is included in the rent, and that he crossed out the word "free" because it was coin operated. A copy of that tenancy agreement was provided in advance of the hearing, and it shows a word crossed off beside the word "laundry" in that area of the document, but it is not readable. However, page 6 of the tenancy agreement is missing, and during the hearing it was determined that neither the tenant's nor the landlord's copy has page 6.

Analysis

Firstly, the landlord already has an order with respect to the security deposit and with respect to the rent for November and December, 2009. Therefore, the application to retain the security deposit in partial satisfaction of this claim and for a monetary order

for rent for those months is *res judicata*, meaning that I have no jurisdiction to deal with a matter that has already been dealt with by way of dispute resolution.

The tenant has acknowledged owing rent for the month of January, 2010, and the landlord is entitled to a monetary order in the amount of \$725.00. The landlord was not able to provide evidence as to the move-out date by the tenant, and the tenant testified that she moved on February 1, 2010. The notice to end tenancy was issued to the tenant by posting it to the door of the unit. The *Residential Tenancy Act* states that it is deemed to be served 3 days after posting it, and I find that it could not have been posted to the door 10 days before it was issued. Therefore, having found that it was issued on January 17, 2010 as evidenced by the date issued on the form, and posted to the door the same day, the tenant is deemed to be served on January 20, 2010. The effective date for the expected vacancy would then be 10 days later, being January 30, 2010. The notice also states that the tenant owed rent in the amount of \$2,175.00 that was due on January 1, 2010. That amount of rent is not what was owed for January. I find that the tenant moved out of the unit due to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities although she remained in the unit until February 1, 2010.

The landlord has not provided any evidence to support the application for a monetary order for damage to the unit, site or property.

The landlord had also applied for an Order of Possession at the time of the previous hearing, but was given an opportunity to provide a copy of the notice to end tenancy however he did not, and therefore was not successful with his application for an Order of Possession.

With respect to the laundry issue, I refer to the tenancy agreement. That agreement states:

“b) What is included in the rent: (*check only those that are included and provide additional information, if needed.*) The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.”

The boxes checked are: water, electricity, heat, furniture, stove and oven, refrigerator, carpets, window coverings, cablevision, laundry, garbage collection.

The cablevision is included obviously without charge, and there is no dispute or evidence to not support that finding, as well as electricity, heat, furniture, etc. It is not clear in the tenancy agreement that the tenant would have to pay for laundry facilities; in fact, it appears to be free, along with the other items included in the rent. The tenant testified that she was not told they were coin operated machines, and by reading the tenancy agreement, I find that the tenant had every reason to believe that laundry was included with the rent without charge. I further find that the tenant's evidence of washing clothes 3 or 4 loads every 10 days @ \$7.00 each time is justified.

Conclusion

For the reasons set out above, I hereby order that the tenant pay to the landlord the sum of \$725.00 for unpaid rent for the month of January, 2010.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

The landlord's application to retain the security deposit is considered *res judicata*, and therefore is dismissed without leave to reapply.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby allowed at \$383.25.

Since both parties have been partially successful in their claims, I decline to award the filing fee to either party.

I further order that the amounts be set off from one another, and I grant the landlord a monetary order in the amount of \$341.75.

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 22, 2010.

Dispute Resolution Officer