



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord has requested orders for monetary compensation under the Act or tenancy agreement, for damage to the rental unit, to keep all or part of the security deposit, and to recover the filing fee for the Application.

The Tenant has requested monetary orders for compensation under the Act or tenancy agreement, for return of the security deposit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Landlord entitled to the monetary compensation sought?

Is the Tenant entitled to the monetary compensation sought?

Background

This is the third hearing involving these parties.

The Landlord's Claim and Evidence

In the present case, the Landlord is claiming that the Tenant did not repair damages to the rental unit before he vacated. The Landlord has submitted evidence in the form of documents and photographs, which he claims shows the damages caused by the Tenant.

In his testimony the Agent for the Landlord explained he did a walk through inspection with the Tenant at the end of the tenancy, on December 31, 2009. The Agent testified that the Landlord came in two days after and found there was a lot of damage done by the Tenant, which was not noticed at the earlier walk through. The Landlord and his Agent testified that they had not performed written incoming nor outgoing condition inspection reports.

The Landlord claims the Tenant damaged the walls by leaving holes and marks, that the smoke alarm was missing, that the blinds had been new when the Tenant moved in but were now dirty and damaged and that the carpets had cigarette burn holes in them, and he did not clean the toilet. The Landlord testified he saw a former roommate of the Tenant smoking outside of the rental unit. He accuses this roommate of smoking inside the rental unit and making the burns in the carpet.

In reply the Tenant testified and submitted a statement from a witness that the carpets were damaged at the outset of the tenancy, and that the blinds were damaged and old when he moved in. The Tenant questioned the validity of the photographs presented by the Landlord and suggested they may be from a different rental unit. The Tenant also submitted photographs of the subject rental unit when he vacated, and these were not questioned by the Landlord.

The Tenant's Claim and Evidence

In his claim, the Tenant is alleging the Landlord did not use the rental unit for the purposes he gave for ending the tenancy. The Landlord issued the two month Notice to the Tenant in order for his son to move into the rental unit, and the Tenant vacated on December 31, 2009. The Tenant alleges the Landlord ended the tenancy in bad faith.

The Tenant submitted in evidence the Decision from a previous hearing, where the Dispute Resolution Officer cites the Landlord as testifying he wanted to end the tenancy in order for him to move his cousin from Alberta into the unit.

The Landlord testified in the present hearing that his son had moved some personal items and papers into the rental unit but was not living there yet, because the rental unit required a total renovation due to the condition it was left in by the Tenant. In his written submissions the Landlord wrote, "Our basement suite remains empty to date."

[Reproduced as written.]

The Tenant is also claiming for double the return of the security deposit. The Landlord claimed against the security deposit within 15 days of the end of the tenancy. As described above, the Landlord did not perform incoming or outgoing condition inspection reports in accordance with the Act.

Analysis

Based on the above, the testimony, evidence and photographs, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In regard to the Landlord's claims, I dismiss his Application. The Landlord's claim against the security deposit has been extinguished by operation of section 24 of the Act, as he failed to perform an incoming condition inspection report in accordance with the Act and regulation.

I find that the Landlord had insufficient evidence to meet the burden of proving the Tenant caused any of the alleged damages to occur. Without an incoming condition inspection report it is up to the Landlord to establish the condition of the rental unit at the time the Tenant moved in. This led me to examine if the Landlord's evidence regarding the condition of the rental unit has credibility, and having done so, I find the Landlord's evidence is questionable and exaggerated.

There were several instances where the Landlord's evidence and testimony lacked consistency. In one example, he submitted a photograph of a toilet alleging it was from the rental unit and left dirty by the Tenant. This is clearly a different toilet from the toilet in the photographs submitted by the Tenant. In the Tenant's photographs the hinges for

the toilet seat appear on the bottom of the toilet seat. In the Landlord's photographs of the toilet seat, the hinges are not visible. These are clearly two different toilets.

In another example, the Landlord testified that the venetian blinds were brand new in the rental unit when the Tenant moved in. In the Landlord's photographs the set of blinds appear to be of a metal style and age of at least 20 to 30 years old. This leads me to accept the testimony of the Tenant that the Landlord has submitted some photographs of a different suite, not the subject rental unit.

While the Landlord had a "contractor" who was willing to testify to the condition of the rental unit before the Tenant moved in and what work needed to be done, I found that the lack of veracity in the Landlord's evidence could not be rehabilitated by any witness, and therefore, I did not need to hear this witness.

Therefore, I dismiss the entire claim of the Landlord.

In regard to the Tenant's claims, I allow his Application and grant a monetary order against the Landlord.

As described above, the Landlord is precluded from claiming against the security deposit of the Tenant by section 24 of the Act. I order the Landlord to return the security deposit and interest to the Tenant.

I further find the Landlord has breached section 51(2)(b) of the Act, by failing to have his son move into the rental unit within six months of effective date of the Notice to End Tenancy.

By his own testimony and written submissions the Landlord has admitted he has not used the rental unit for the purpose he gave in the Notice to End Tenancy. From the pictures provided by the Tenant I find that the unit was certainly inhabitable and did not need a total renovation for anyone to move in, as claimed by the Landlord.

Therefore, under section 51(2)(b) of the Act I must order the Landlord to pay the Tenant the equivalent of double the rent for one month.

Having made the above determinations, I find that the Tenant has established a total monetary claim of **\$1,803.51**, comprised of \$1,400.00 for double the monthly rent, \$353.52 for the return of the security deposit and interest, and the \$50.00 fee paid by the Tenant for this application.

I grant the Tenant an order under section 67 for the balance due of **\$1,803.51**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's claim is dismissed as there was insufficient evidence regarding the alleged damages caused by the Tenant. I find the Landlord exaggerated his claim and there was a lack of credibility in his evidence, which brought into question the whole of his claim.

The Tenant's claim is allowed, as the Landlord's claim against the security deposit was extinguished when the Landlord failed to do an incoming condition inspection report, and the Landlord's own evidence indicated he failed to use the rental unit for the purposes he gave in the two month Notice issued to the Tenant. The Tenant is awarded \$1,803.51, payable by the Landlord.

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 15, 2010.

Dispute Resolution Officer