



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, OLC, RP, CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought a monetary and the tenant sought to cancel a notice to end tenancy; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; an order to have the landlord make repairs and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the tenant confirmed that she had moved out of the rental unit. As a result her application to cancel a notice to end tenancy; for an order to have the landlord comply with the *Act*, regulation or tenancy agreement; and for an order to have the landlord make repairs are no longer pertinent and as such her application is amended to exclude these matters.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; and for all or part of the security deposit, pursuant to sections 38, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to sections 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on August 1, 2010 as a month to month tenancy for a monthly rent of \$950.00 due on the 1st of the month with a security deposit of \$475.00 paid. The tenancy ended when the tenant vacated the rental unit prior to September 5, 2010.

The landlord testified that when they completed the "Intent to Rent" form for the tenant to take to her Income Assistance worker they had asked to have the rent sent to them directly from her monthly cheque. The tenant acknowledged that it had been set up that way but that she had requested her worker change it to pay to her and she would pay her own rent.

Income Assistance cheque issue day for September 2010 was August 25, 2010 and when the landlord did not receive a cheque from Income Assistance by September 1, 2010 a 10 Day Notice to End Tenancy for Unpaid Rent was issued to the tenant.

The tenant testified that she hadn't paid the rent because the landlord's agent did not come to collect that instead he showed up on September 2, 2010 with the notice to end tenancy. The tenant testified that she would not have been able to pay rent for this rental unit and a new one so she did not pay the September rent to this landlord.

The parties agreed that despite the tenancy start date of August 1, 2010, the landlord did not supply a stove to the rental unit until August 18, 2010. The landlord testified that he had ordered a stove that he had been promised would arrive prior to the start of the tenancy.

He further states that the stove had to be back ordered and at the start of August they believed the stove would arrive any day and so offered the tenant some money to pay for a few meals. When it became apparent the delay was going to be longer the landlord offered to provide the tenant with free rent for those days that she was without a stove. The tenant acknowledged the landlord's offer and that she rejected the offer.

The tenant contends that when she took possession of the rental unit that it was not cleaned and that it required her to clean the rental unit. The tenant provided 25 photographs showing the condition of the rental unit.

While the tenant had applied for compensation in the amount of \$2,500.00 she stated in the hearing that she was only seeking compensation in the form of returned rent for August 2010 and for her time cleaning the rental unit.

The landlord provided documentary evidence that he had hired a person to clean the rental unit prior to occupancy and testimony that the rental unit was clean and suitable for occupancy.

A move in condition inspection was not completed. The landlord testified that his agent had arranged to complete a move in inspection on August 1, 2010 but that the tenant never appeared and that he attempted to contact the tenant to make alternate arrangements but was unable to contact her.

The tenant testified that she had called the agent to say that she would be 45 minutes late but that the agent did not answer his phone and that when the inspection did not take place she attempted several times to contact the agent who did not return her calls.

The tenant also states that she found mice in her couch and that she called upon the landlord to deal with the matter and that the landlord did not. She states that as a result she had to throw out her couch.

The landlord testified that upon receiving the tenant's complaint they inspected her couch and found it not to have mice in it. In addition the landlord testified that prior to the start of the tenancy he had contracted a pest control specialist to ensure there were no mice and the first visit was conducted on July 27, 2010 and the follow up visit was scheduled for August 31, 2010 as per the specialist's recommendation. The landlord provided documentary evidence of these visits.

Analysis

To be successful in making a claim for compensation for loss and damages resulting from a breach of the *Act*, regulations or tenancy agreement the party making the claim must provide sufficient evidence to substantiate and prove the following 4 points:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulations or tenancy agreement;
3. The value of that damage or loss; and
4. The steps taken by the party making the claim to mitigate any damage or loss.

In the hearing, the landlord confirmed that although his application is for unpaid rent for September 2010 and for damage/cleaning of the rental unit, he only seeks to retain the security deposit. The security deposit is \$475.00.

Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulations or the tenancy agreement. As the tenant failed to pay rent for the month of September 2010 in contravention of Section 26, I find the tenant is responsible for rent for the month of September 2010.

In relation to the tenant's claim for compensation for the month of August 2010 rent resulting from the rental unit not having a stove, I find the tenant failed to mitigate her losses by rejecting the landlord's offer for free rent for the period of time that she went without a stove.

As to the tenant's claim that the landlord did nothing about the mouse problem, I find the landlord had been proactive in anticipating the potential of a mouse problem and had already begun appropriate action. The photograph of the couch submitted does not provide any evidence that there are or were mice in the couch. As such, I find the tenant has not established the loss or damage to her couch.

While I accept that the landlord had hired a cleaner, I also accept the photographic evidence submitted by the tenant that shows the condition of the rental unit to be less than clean. As such, I accept that the tenant likely had to spend a significant time to clean the rental unit, however, the tenant has failed to provide any evidence to substantiate the value of this loss.

As the landlord has established the tenant failed to pay rent in the amount of \$950.00; confirmed that his claim is solely to keep the security deposit; and as I have found the tenant has failed to establish any claim against the landlord, I find it unnecessary to consider his claim for damage to the rental unit.

Conclusion

For the reasons noted above, I dismiss the tenant's applications in their entirety.

I find the landlord is entitled to retain the security deposit in the amount \$475.00.

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: September 30, 2010.

Dispute Resolution Officer