



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, MNSD, O

Introduction

This hearing was convened by way of conference call to deal with cross applications filed by the landlord and the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain 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 loss or damage under the *Act*, regulation or tenancy agreement; and for return of the security deposit.

The parties each gave affirmed evidence and each provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. All information has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

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 money owed or compensation for loss or damage 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 loss or damage under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to return of the security deposit?

Background and Evidence

This fixed term tenancy began on October 1, 2009, expired on March 31, 2010 and was renewed to expire on September 30, 2010. The parties disagree as to the date the tenant vacated the rental premises; the landlord testified that the tenant moved on May 11, 2010 and the tenant testified she moved on May 1, 2010.

Rent in the amount of \$1,100.00 was payable in advance on the 1st day of each month. On September 15, 2009 the landlord collected \$100.00 towards the security deposit, and the balance of \$450.00 was paid on September 29, 2009. A move-in condition inspection report was completed by the parties at the outset of the tenancy, and a move-out condition inspection report was completed on May 11, 2010 by the landlord, without the tenant present.

The landlord's agent testified that the tenant did not provide written notice to vacate the rental unit. He stated that on May 7, 2010 he went by the unit and noticed that the tenant had gone and only 2 of the 4 people living at the rental unit remained. Only one tenant was named in the tenancy agreement; the others were occupants. He stated that he allowed the occupants to remain in the unit until May 15, 2010 but believes they moved before that date.

The landlord's agent further testified that the tenants did not clean the unit upon leaving and left broken furniture and other debris behind. Also 3 doors had to be replaced at the end of the tenancy due to holes that did not exist at the beginning of the tenancy however the landlord had no receipts to support this claim.

The landlord's agent also testified that the tenant was responsible for utilities, and \$879.94 remains outstanding. He testified that he receives the bills, pays the amounts due and then mails a copy of the bill to the tenants for reimbursement. The tenant pays

60% of the utilities. He stated that on April 7, 2010 he sent a gas bill in the amount of \$153.82 to the tenant; on April 27, 2010 he sent a City bill in the amount of \$147.28 to the tenant; on March 26, 2010 he sent a City bill in the amount of \$158.44 to the tenant; none of which have been paid by the tenant, and stated that all other utility bills had been paid by the tenant. The landlord provided a copy of a Tenant Ledger and testified that the ledger contains an error; \$158.44 was charged twice. On April 27, 2010 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which stated that the tenant failed to pay utilities in the amount of \$721.50 that was due on April 27, 2010 and has an effective date of vacancy of May 10, 2010. The landlord provided only 1 page of the 2 page document at the hearing.

The landlord is claiming \$1,100.00 in unpaid rent for the month of May, 2010, as well as \$900.00 for the cost of repairs to damage, cleaning and rubbish removal.

He further testified that he tried to call the tenant to schedule the move-out condition inspection but did not reach her. He then made sure everyone was gone and then completed the move-out condition inspection without the tenant or any occupants present.

The tenant testified that on April 26, 2010 the landlord's agent entered her rental unit and opened her bedroom door while she was naked. She hollered at him before he opened the bedroom door, but he still opened the door. He laughed at her, and she called the police. This evidence is undisputed by the landlord's agent. He departed before the police arrived, the police woman phoned him, but he did not answer the phone. She stated that she was under complete stress and distraught and was too fearful to speak to him. Upon vacating the unit, she provided a Post Office Box number located at the mall as her forwarding address and had someone else deliver it with the keys to the landlord's agent because she was fearful of him and did not want him to know where she had moved to. She further testified that this was the fourth time he entered her unit without notification.

The tenant testified that during the tenancy, the people living above her unit were drug people and extremely violent. She stated that the landlord's agent was well aware of it, she complained to him on several occasions and he did not take any action. The tenant feels the landlord has breached her right to quiet enjoyment, and she was fearful of the other tenants and the landlord's agent.

The tenant also provided evidence, a copy of a receipt, showing that she secured a new rental unit for May 1, 2010 by paying the first month's rent on April 22, 2010.

Analysis

In the circumstances, I find that the tenant's right to quiet enjoyment was breached by the landlord. I further find that privacy in one's home is a material term of the tenancy, which was also breached by the landlord. For that reason, I find that the tenant was justified in breaking the tenancy agreement.

I have examined the utility bills and the Tenant Ledger provided by the landlord. I find that the landlord's calculations contain more than the one error that he testified to. He stated that on April 7, 2010 he sent a gas bill in the amount of \$153.82 to the tenant, and I find that that bill contains a late payment charge for which the tenant cannot be held liable, and contains an amount from a previous bill that the landlord testified had been paid. Therefore, I find that the charge of \$153.82 should be reduced to \$73.58. Further, the landlord has failed to establish his claim of \$879.94 for unpaid utilities.

I also find that the landlord has not been consistent in his own evidence. He firstly testified that the tenant moved from the rental unit on May 11, 2010, and then testified that he went by the unit on May 7 and the tenant was gone. He then allowed occupants to remain in the unit until May 15, 2010.

With respect to the landlord's application for damages to the unit, I find that the landlord has failed to provide the tenant with 2 opportunities to conduct the move-out inspection, and has therefore failed to comply with Section 35 of the *Residential Tenancy Act*. The consequences for that failure are set out in Section 36 of the *Act*, which states that the

landlord's right to claim against the security deposit for damages to the unit is extinguished.

Further, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy a four-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the Tenancy Agreement;
3. The amount of such damage or loss;
4. What efforts the claiming party made to mitigate the damages.

I find, in the evidence before me, that the landlord has failed to prove any damages, any breach by the tenant, any amount of damages claimed, and failed to mitigate damages by allowing other occupants to remain in the unit after the tenant vacated.

With respect to the tenant's application for a monetary order, I find that the tenant has established that the tenancy was devalued from the date that the landlord entered her bedroom uninvited, and I find that the equivalent of one month's rent is justified in the circumstances.

Conclusion

For the reasons set out above, the landlord's application for damages to the unit, site or property is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent for the month of May, 2010 is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid utilities is hereby awarded at \$379.30.

The landlord's application for retention of the security deposit is hereby 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 \$1,100.00.

The tenant's application for return of the security deposit is hereby awarded at \$550.00.

Since both parties have been partially successful with their applications, I decline to order that either party recover the filing fee for the cost of this application.

I further order that the amounts be offset from one another and I grant the tenant an order under section 67 for the balance due of \$1,270.70. This order may be filed in the Small Claims Court 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: November 04, 2010.

Dispute Resolution Officer