



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 22, 2010. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on June 27, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord testified that she chose to personally serve her evidence to the Tenant so she had to wait until he was available for her to do so. She advised that she did not deliver her evidence to the Tenant until November 1, 2010, three days before today's hearing.

The Landlord stated that the parties entered into a written month to month tenancy effective September 1, 2005 which ended May 31, 2010. Rent was payable on the first of each month in the amount of \$700.00 and the Tenant paid a security deposit of \$300.00 on August 10, 2005. The rental unit is a self contained suite which was built in

May 2005. The Tenant was the second tenant to occupy the unit which was in brand new condition at the onset of his tenancy. The Tenant provided the Landlord with his forwarding mailing address in writing on June 15, 2010. No move in or move out inspection reports were completed although the Landlord attempted to conduct a move out inspection the Tenant would not avail himself to attend the inspection.

The Landlord requested the Tenant sign over his security deposit to put towards damages however the Tenant refused. Therefore the Landlord is seeking a monetary award as follows:

- 1) Cleaning costs of \$287.50. The Landlord stated the tenancy agreement provides the Tenant was required to keep the rental unit clean however when the Landlord conducted her periodic inspections during the tenancy she found the unit to be in an unclean state. When she discussed this with the Tenant he would always advise that he did not have the time to clean the unit so the parties entered into a verbal agreement whereby the Landlord would clean the rental unit and she would keep track of her time. There was no agreement of the amount of payment or when payment would be due as part of their agreement. The Landlord is seeking the payment for 11.50 hours of cleaning she completed during the course of the tenancy.
- 2) \$50.00 to compensate the Landlord when the Tenant had two guests for a one week period. The Landlord states the tenancy agreement provides that there will only be one adult tenant. The Tenant allowed two guests stay at the unit for a one week period from Tuesday to Tuesday and he agreed to pay the Landlord \$50.00 for their attendance.
- 3) \$1,025.00 in late payment fees. The tenancy agreement provides rent is payable on the first of each month and for a \$25.00 late payment fee. The Landlord states the Tenant paid his rent late for 41 of the 57 months of the tenancy. She states that she attempted to claim the late payment fee however the Tenant would just reply by saying he would pay her in hugs, kisses, or sex and would never pay her the money. She confirmed that she did not serve the Tenant with any written notices to collect the late payment fee or to advise him that late payments would no longer be tolerated. She made no effort to seek recovery of the late payment fees through dispute resolution prior to this application.
- 4) \$116.00 to replace two closet shelves. The closet has a built in custom closet organizer where the Tenant damaged two shelves. One was damaged because the Tenant stored a car battery on it which leaked fluids and another shelf was damaged by some other fluid which could not be cleaned or repaired. Both shelves were new in May 2005 and were replaced June 1, 2010 at a total cost of \$116.00.

- 5) \$247.22 to replace the mirror. The mirror was damaged during the tenancy and could not be repaired. The mirror was new from May 2005 and was replaced on June 17, 2010 at a cost of \$247.22.
- 6) \$25.00 for the Landlord's labour to clean the driveway. The Tenancy agreement stipulates that the Tenant is to ensure there would be no fluid leaks or oil leaks onto the driveway. The Landlord provided the Tenant with a piece of plywood and requested that he ensured no leaks reached the driveway or if they did to clean them up. The Landlord states that throughout the tenancy she had to spend about 1 hour cleaning these spills for which she is seeking compensation.

In closing the Landlord confirmed that she did not issue the Tenant any notices or requests for payment in writing rather their agreements and discussions were always verbal.

Analysis

The Landlord confirmed that she did not provide the Tenant with copies of her evidence until three days prior to today's hearing which is in contravention of section 3.5 of the *Residential Tenancy Branch Rules of Procedure* which stipulates that the applicant's evidence must be received by the respondent at least five days before the dispute resolution proceeding. Considering evidence that has not been served on the other party in accordance with the Rules of Procedure could create prejudice and constitute a breach of the principles of natural justice. Therefore, in accordance with the *Residential Tenancy Branch Rules of Procedure 11.5 (b)*, as the respondent Tenant did not receive copies of the Landlords' evidence five days in advance of this hearing, I find that the Landlord's documentary evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

Given the testimony before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord is seeking compensation for a verbal contract of service that she alleges the two parties entered into for her cleaning services throughout the tenancy agreement whereby she cleaned the rental unit for a total cost of \$287.50. While the tenancy agreement does provide the Tenant must keep the rental unit clean, the Landlord did not issue the Tenant written notice to have the unit cleaned and instead entered into a verbal agreement that the Landlord would perform the cleaning and keep track of her time. There was no agreement that the Tenant would pay for the Landlord's cleaning services. In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However in the absence of one party the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. Based on the aforementioned I find the Landlord provided insufficient evidence to support her claim of \$287.50 and the claim is hereby dismissed.

The Landlord is seeking \$50.00 for a verbal agreement whereby the Tenant allegedly agreed to pay for two guests who were visiting him for a one week period. While the tenancy agreement may stipulate that the unit be occupied by only one adult tenant it cannot stipulate when or if a tenant may have a guest(s). Section 5 (1) of the *Residential Tenancy Regulation* states that a Landlord must not charge a guest fee, whether or not the guest stays overnight. The two people having stayed with the Tenant for only a seven day period supports that they were in fact guests and not attempting to be full time occupants of the unit. Therefore I find the Landlord may not seek compensation of \$50.00 and I hereby dismiss her claim.

The tenancy agreement provides the Tenant must pay his rent on the first of each month or suffer a late payment fee of \$25.00. The Landlord did not issue the Tenant written notices advising the Tenant he must pay his rent on time rather she continued to allow the Tenant to pay his rent late for 41 months, which established a pattern that this was acceptable. Section 47 (1) (b) of the Act provides that a Landlord may issue notice to end a tenancy if a tenant is repeatedly late paying rent, however the Landlord made

no effort to end the tenancy for this reason. By not taking formal action to collect the late payment fees the Landlord has failed to mitigate her loss. Therefore I find the Landlord has failed to meet the test for damage or loss, as listed above, and I hereby dismiss her claim of \$1,025.00.

Section 32 (3) states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Section 37 of the Act states that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

The *Residential Tenancy Policy Guidelines* stipulate that the useful life of a cabinet or closet shelf to be 25 years while the useful life of a mirror is 15 years. Based on the above, and in consideration that each item is five years old, I hereby approve the Landlord's claim for the closet shelves to be \$92.80 ($\$116.00 \times 20/25$) and \$164.81 for the mirror ($\$247.22 \times 10/15$)

The tenancy agreement provides that the Tenant is to ensure there would be no fluid leaks or oil leaks onto the driveway. There is no evidence to support that the party's verbal agreement was that the Tenant would pay the Landlord \$25.00 for cleaning she provided throughout the tenancy. Therefore I find the Landlord has not provided sufficient evidence in support of this claim and the claim is hereby dismissed.

The Landlord has been partially successful with her application, therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Repair / replacement of the closet shelves	\$92.80
Replacement of the damaged mirror	164.81
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$307.61
Less Security Deposit of \$300.00 plus interest of \$10.62	- 310.62
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$3.01

As the amount owing to the Tenant is less than five dollars, I decline to issue a monetary order.

Conclusion

I HEREBY ORDER the Landlord to retain the security deposit and interest in full satisfaction of her claim.

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 05, 2010.

Dispute Resolution Officer