



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, MNDC

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for an order 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.

All 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.

Issue(s) to be Decided

Is the Landlord entitled to the monetary compensation sought?

Background and Evidence

I heard testimony that the Tenant moved in on January 28, 2010, and the tenancy began, according to the tenancy agreement submitted, on February 1, 2010. The monthly rent was \$2,000.00 and a security deposit of \$1,000.00 was paid on January 28, 2010.

The parties do not agree as to whether or not the tenancy was for a fixed term of one year or a month to month tenancy, with the Landlord testifying the tenancy was a fixed term of one year and the Tenant testifying that it was on a month to month basis.

I note on the portion of the tenancy agreement addressing "Length of Tenancy" the box next to "on a month to month basis" was ticked and below this, the box next to "for a fixed length of time" was not ticked. However length of time was filled in, showing 1 year, and ending on 31-01-2010.

I heard testimony that the Tenant never supplied a forwarding address and that the Landlord has not refunded the security deposit.

The Landlord's relevant evidence included a copy of the tenancy agreement, a copy of a rent cheque for July, which was returned as "stop payment," advertising costs receipts, and a washer and dryer receipt.

The costs associated with the Landlord's claim are as follows:

Description	Amount
One month's rent (\$2,000.00-\$1,000.00 sec. dep.)	\$1,000.00
Loss in difference of rent, Aug.- Jan 2011 (\$200.00 x 6 mths.)	1,200.00
Replacement of sink, tap, pipes in kitchen	1,887.00
Replacement of washer and dryer	896.00
Cost of advertising	109.00
Filing fee	50.00
Total	\$5,142.00

In support of the claim, I heard testimony from the Landlord that there was an inspection at the start and end of the tenancy and that photos were taken; however, upon query, the Landlord acknowledged there was no written move in and move out condition inspection report required under the Act. I note that no photos were submitted into evidence.

I heard testimony from the Landlord that after the Tenant moved out, they noticed that the washing machine and dryer, copper pipe, kitchen sink, and taps were stolen. The Landlord testified that the police were called to investigate and he was told by the officer there was no forced entry into the rental unit.

I heard testimony from the Landlord that the circumstances were suspicious and he believed the Tenant was responsible for the theft.

I heard testimony from the Landlord confirming receipt on May 31, 2010 of the Tenant's written notice to end the tenancy, effective June 30, 2010.

I heard testimony from the Landlord that after the end of the tenancy, it took a month to clean the rental unit before it could be re-rented in August, causing them to lose a month's rent in July.

The Landlord further testified that all parties understood that the tenancy was for a fixed term of one year and that the Tenant initialled the "for a fixed length of time" provision. The Landlord testified that the rent had to be reduced to \$1,800.00 per month and is seeking the difference in rent for the remaining months of the tenancy agreement.

The Tenant's relevant evidence included a copy of the tenancy agreement and a copy of the written notice to vacate.

I heard testimony from the Tenant she never agreed to a fixed term tenancy, that the tenancy was a month to month and that the Landlord attempted to change the terms of the length of tenancy unilaterally. The Tenant stated she gave the proper notice and was not responsible for obligations under a fixed term tenancy.

I heard testimony from the Tenant that she and her family had been moving out in stages and that when they returned to get the last load of possessions after having moved out the day before, they found the rental unit had been vandalized. I heard testimony from the Tenant categorically denying the theft and that she speculated the actual thief had been watching them move out.

Upon query, both parties confirmed there had been no request for a police report.

Analysis

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

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.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the Landlord in this case, 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.

Section 23 and 35 of the *Act* requires a landlord to complete an inspection report in accordance with the Act and regulation and the Landlord admitted not completing the inspection report. By operation of Section 24 and 36 of the Act the Landlord's right to claim against the security deposit is extinguished.

I find that without proof of a move in or move out inspection or condition inspection report or police report, most of the evidence consisted of disputed, verbal, testimony. When the evidence consists of conflicting and disputed verbal testimony and evidence, then the party who bears the burden of proof will not likely prevail.

I find the Landlord submitted insufficient evidence to establish the condition of the rental unit either before or after this tenancy which required a month to clean or that the Tenant committed the theft. I am influenced by the lack of, or even the attempt to obtain, a police report. Rather the proof consisted of innuendo and I find on a balance of probabilities, that the Tenant did not commit the theft. Therefore I **dismiss** that portion of the Landlord's claim for replacement of the sink, tap, pipes and washer and dryer in the amount of \$2,783.00.

On the subject of whether or not this tenancy was on a fixed term or month to month, Section 6(3)(c) of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. The Landlord is obligated under the Act to provide a clear and unambiguous tenancy agreement.

I find that the tenancy agreement is unclear and improperly filled out, first with the box for "month to month" ticked, then apparently later changed to a fixed term tenancy listing an incorrect end of tenancy date, with that box not being ticked. The Tenant testified that she signed and understood the tenancy was on a month to month and denied initialling the change. I find the Landlord submitted insufficient proof to establish that the Tenant initialled the fixed term provision. Therefore I find the Landlord submitted insufficient proof of a valid 1 year fixed term tenancy and on a balance of probabilities I find that this tenancy was on a month to month basis. Therefore, I find the Tenant gave sufficient notice to end the periodic tenancy under Section 45(1)(a) and I **dismiss** the portion of the Landlord's claim for loss of one month's rent for July for \$2,000.00, the difference in rent of \$200.00 for August through January 2011 in the amount of \$1,200.00 and advertising costs.

As I have dismissed the Landlord's application for a monetary order, I decline to award the filing fee.

The security deposit is held in trust for the Tenant by the Landlord. As I have dismissed the Landlord's application, I find that the Landlord is not entitled to retain any portion of the security deposit and I **direct** the Landlord to return the security deposit to the Tenant, pursuant to section 38 of the Act.

I **grant** the Tenant an Order under section 67 for the amount of **\$1,000.00**. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion

The Landlord's Application is dismissed and they are directed to return to the Tenant the security deposit \$1,000.00.

The Tenant is granted a monetary order for **\$1,000.00**.

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: January 21, 2011.

Residential Tenancy Branch