



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

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.

The female Tenant made a request for an adjournment at the start of the dispute resolution hearing. The Tenant stated that she was on the way to a family bereavement ceremony, driving through rural parts of the Province and was not sure if she would maintain her mobile phone reception through the duration of the hearing.

I have denied the Tenant's request for an adjournment of this hearing. I find that the Tenant was parked in an area with clear reception and would be able to remain there during the length of the hearing. Additionally the male Tenant participated in the hearing at another location, with no reception difficulties.

On a procedural note, the Landlord submitted a package of evidence, including photos, after the hearing, which I have not examined or considered.

Issue(s) to be Decided

Is the Landlord entitled to the monetary compensation sought?

Background and Evidence

There was no written tenancy agreement submitted into evidence. I heard testimony that the tenancy began February 15, 2010, the monthly rent was \$1,350.00 and a security deposit of \$675.00 was paid on February 15, 2010. I note that the rent cheque issued by the Tenants for August was \$1,300.00.

I heard testimony from the Landlord that the Tenants moved out at midnight on August 15, 2010, and testimony from the Tenants that they moved out on August 23, 2010, after receiving a 10 Day Notice to End Tenancy on August 13, 2010.

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

The Landlord's relevant evidence included a copy of returned NSF cheques for \$1,300.00 and \$319.00 written by the Tenants, a summary apparently from a subcontractor of alleged damages to the rental unit, receipts from home improvement stores, a receipt from a locksmith, an invoice from a flooring company, and a receipt from a cleaning company.

The Landlord's claim for \$8,140.06 includes the amount listed on the NSF cheques, cleaning, flooring, locksmith, store purchases, alleged subcontractor costs and the filing fee.

In support of the claim, I heard testimony from the Landlord that she believed there was a move in inspection, but didn't have the report on hand. The Landlord testified she thought there was a move out inspection, but again no copy of a condition inspection report was submitted.

In her attempts to sell her home, I heard testimony from the Landlord that the Tenants allowed a potential buyer to view the home on August 1, 2010, at which time there were no visible damages. I heard testimony from the Landlord that an inspection after the end of the tenancy revealed that the Tenants damaged the rental unit in the form of broken taps, leaving the water running, toilets not flushing properly, the hand rail destroyed, blinds and garbage cans broken, dents and holes in the wall, stains on the carpet, and mould in the bathroom.

The Landlord testified that she had photos of the alleged damage in the rental unit, but admitted she had not supplied those into evidence before the hearing.

The Tenants' relevant evidence included email transmissions between the female Tenant and the Landlord, online advertising of the rental unit and a letter from the downstairs tenant.

I heard testimony from the female Tenant that as to the rent for August, she was under the impression that she received a 2 month notice to vacate the rental unit as the Landlord was selling it and that she did not have to pay rent for that month.

I heard Testimony from the Tenant that there was damage to the carpet prior to the tenancy. I heard testimony from the Tenant that she cleaned the rental unit at the end of the tenancy, and that she tried to steam clean the carpets, but was unable to lift some stains in a high traffic area which were there at the beginning of the tenancy.

I heard testimony from the Tenant denying the Tenants damaged the rental unit to the extent alleged by the Landlord.

I heard testimony from the Tenant that she left the keys in the house after moving out and that the handrail was removed to move in larger furniture, not destroyed, and remained in the rental unit.

I heard testimony from the Tenant there was an inspection, but she never received a 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 *Residential Tenancy Act*, the party making the claim, 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 value of the 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 there is no evidence the Landlord complied with the *Act*.

I find that without a copy of a move in or move out condition inspection report or photos, most of the evidence consisted of disputed, verbal, testimony. When the evidence consists of conflicting and disputed verbal testimony and evidence, then it is virtually impossible for a third party to establish facts.

As to damages to the rental unit, in the absence of the condition inspection report, I find the Landlord submitted insufficient evidence to establish the condition of the rental unit either before or after this tenancy; therefore I find the Landlord failed to prove the Tenants damaged the rental unit and **dismiss** her claim for damages.

As to the Landlord's claim for \$319.00 for an NSF cheque for utilities, the Landlord submitted insufficient evidence to prove the Tenants owed this amount and I **dismiss** her claim for \$319.00.

As to the Landlord's claim of \$1,300.00 for unpaid rent for August, under section 26 of the *Act*, a tenant is required to pay rent in accordance with the terms of the tenancy

agreement and is not permitted to withhold rent without the legal right to do so. I find the Landlord's emailed notification to the Tenants of a potential buyer's viewing does not meet the requirements of Section 49 and did not constitute a 2 Month Notice to End Tenancy.

Therefore I find the Tenants did not have authority to withhold rent under Section 26 and did owe rent for the month of August 2010. I **grant** the Landlord's claim for \$1,300.00 for the NSF cheque issued by the Tenants.

As the Landlord has been partially successful with her application, I **award** a partial filing fee in the amount of **\$25.00**.

Conclusion

I find that the Landlord has established a total monetary claim of **\$1,325.00** comprised of \$1,300.00 in unpaid rent for August and the \$25.00 partial filing fee paid by the Landlord for this application.

I order that the Landlord withhold from the security deposit of **\$675.00** in partial satisfaction of the claim, and I **grant** the Landlord an order under section 67 for the balance due of **\$650.00**.

This order may be filed in the Provincial Court (Small Claims) 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: January 26, 2011.

Residential Tenancy Branch