



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
 MNSD MNDC FF

Preliminary Issues

Upon review of the details of dispute listed on the Tenant's application for dispute resolution the Tenant confirmed that she is seeking the return of double her security deposit and money owed or compensation for damage or loss under the Act, regulation or tenancy agreement for receiving a 2 Month Notice to End Tenancy for Landlord's use of the property.

The Tenant had clearly indicated these requests in the notes written in the details of the dispute on her application and therefore the Landlords were made aware of the Tenant's requests in the initial application and would not be prejudiced by an amendment to the application to remove the request for "other" and add the request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Based on the aforementioned I amend the Tenant's application accordingly, pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

The Tenant testified she did not receive a copy of the carpet cleaning receipt in the evidence provided by the Landlord. The Landlords could not confirm if they provided the Tenant with a copy of the carpet cleaning receipt, but they believe they did. Not providing the other party with a copy of their evidence would be a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Tenant has not received a copy of the Landlords' carpet cleaning evidence I find that the evidence cannot be considered in my decision. I did however consider the Landlords' testimony pertaining to the carpet cleaning of the rental unit.

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlords filed seeking a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the pet and or 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.

The Tenant filed seeking a Monetary Order for the return of double her security deposit, compensation for loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlords.

Service of the hearing documents by the Landlords to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail January 7, 2011. The Tenant confirmed receipt of the Landlords' hearing documents.

Service of the hearing documents by the Tenant to the Landlords was done in accordance with section 89 of the *Act*, sent via registered mail on October 18, 2010. The Landlords confirmed receipt of the Tenant's hearing documents.

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

Issues(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, have the Landlords met the burden of proof to establish a monetary claim as a result of that breach?
3. Have the Landlords breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
4. If so, has the Tenant met the burden of proof to establish a monetary claim as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement effective January 8, 2009. Rent was payable on the first of each month in the amount of \$750.00 and was later increased by \$20.00 to accommodate the additional cost of cable television. The Tenant paid \$375.00 on January 8, 2009 towards a security deposit. No move-in or move-out inspection was completed.

The Tenant testified that she was served a 2 Month Notice to End Tenancy on August 15, 2010 because the Landlords' son would be occupying the rental unit. She was able to find alternate accommodations sooner so on September 1, 2010, she provided the Landlords with written notice to end the tenancy ten days later, September 10, 2010. This notice included her forwarding address and was given to the Landlords' adult son who resided with them, the Agent. The Tenant informed the Landlords of their obligation to provide her with compensation equal to one month's rent for issuing the 2 Month Notice. She stated the male Landlord told her that he did not have to comply with the Act because they did not have a written lease. She acknowledges that she did not have the carpets cleaned at the end of the tenancy and she was aware this amount would be deducted from her security deposit. That being said, she stated she is not responsible for the cost of paint for the unit and she fulfilled her obligation by patching and sanding all of the nail holes and the holes where the towel rack fell off the wall because it was attached to the drywall and not a stud. When she vacated on September 10, 2010 she gave the Landlords the keys and another letter with her forwarding address and a request for the return of her security deposit. She is seeking the return of double her security deposit less the carpet cleaning cost plus compensation equal to one month's rent less the 10 days rent for September 2010.

The Landlords and their Agent testified and confirmed the Tenant was issued a 2 Month Notice to End Tenancy for Landlord's use of the property. They stated they are of the opinion that they do not owe the Tenant compensation because she vacated the unit prior to the end of the 2 month's notice. They stated that the Tenant owes them \$256.70 of rent for the 10 Days she occupied the rental unit September 1 – 10, 2010, plus \$159.60 for the cost to clean the carpet. The carpet was cleaned on October 30, 2010. They request to retain the security deposit in partial satisfaction of their claim. The Landlords clarified the rent was not increased \$20.00 rather the Tenant requested an increase in the number of cable channels which cost an additional \$20.00 per month.

The Tenant responded stating the cable was hooked up illegally and the cable company found out so they hooked it up properly and charged an extra monthly fee.

Analysis

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

Tenant's Application

After careful review of the evidence I find the Tenant provided insufficient evidence to support that the cable television was installed illegally. Therefore I find rent was \$750.00 per month and that the Tenant requested cable services that were over and above the cost of her rent.

The evidence supports the Tenant was served with a 2 Month Notice to End Tenancy pursuant to section 49 of the Act which was effective October 31, 2010, and the Tenant exercised her right under section 50 of the Act and provided the Landlord with 10 days written notice to end the tenancy effective September 10, 2010.

Section 50 of the Act provides that if a landlord gives a tenant notice to end a periodic tenancy under section 49, (Landlord's use of the property) the tenant may end the tenancy early by giving the landlord at least 10 days written notice to end the tenancy on a date that is earlier than the effective date of the notice and paying the proportion of rent due to the effective date of the tenant's notice. Section 50 (3) states: that a notice given by the tenant under this section of the Act does not affect the tenant's right to compensation under section 51.

Section 51(1) of the Act provides a tenant who receives a notice to end a tenancy under section 49 (Landlord's use of the property) is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 51 (1.1) states a tenant may withhold the amount authorized from the last month's rent and the amount is deemed to be paid by the landlord.

Based on the aforementioned I find the Tenant is entitled to compensation equal to one month's rent of \$750.00 pursuant to section 51 of the Act.

The evidence supports the Tenant provided the Landlords with her forwarding address on September 10, 2010 the date the tenancy ended.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than September 25, 2010. The Landlords do not have the Tenant's permission in writing to keep the security deposit and the Landlords did not make application to retain the deposit until January 7, 2011.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double the security deposit plus interest. (2 x 375.00).

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

Tenant's Monetary Claim – I find that the Tenant is entitled to a monetary claim from the Landlords as follows:

Compensation for ending tenancy for Landlord's Use	\$750.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the Tenant)	\$1,550.00

Landlord's Application

The Tenant has accepted responsibility for the cost of \$159.60 for carpet cleaning and for the cost of 10 Days rent for September 1 – 10, 2010 of \$246.58 (\$750.00 x 12 months divided by 365 days per year x 10 days). Therefore I approve the Landlords' monetary claim of \$406.18.

The Landlords have been successful with their application, therefore I award recovery of the \$50.00 filing fee.

Landlord's Monetary Claim – I find that the Landlords are entitled to a monetary claim from the Tenant as follows:

Unpaid rent for September 1 – 10, 2010	\$246.58
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$456.18

Off-Set Monetary Claims – Cross Applications – These claims meet the criteria under section 72(1) of the *Act* to be offset against each other as follows:

Monetary Order in favor of the Tenant	\$1,550.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$1,093.82

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,093.82**. The order must be served on the respondent Landlords and is enforceable through the Provincial Court 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: February 02, 2011.

Residential Tenancy Branch