



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double his security deposit and a cross-application by the landlord for a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on January 15, 2010, although the landlord permitted the tenant to move into the rental unit several days earlier, and that the tenant paid a \$500.00 security deposit on November 28, 2009. The parties further agreed that the tenant surrendered the last of the keys to the rental unit on October 8, 2010 and that he provided his forwarding address in writing on October 17, 2011.

I address the claims and my findings around each as follows.

- [1] **Tenant's claim for double the security deposit.** The tenant seeks an award of double the security deposit. Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord received the tenant's forwarding address on October 17 and I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit. I award the tenant \$1,000.00 and note that no interest has accrued on the deposit.

- [2] **Landlord's claim for unpaid utilities.** The parties agreed that the tenant was responsible to pay \$62.93 in unpaid utilities. I award the landlord \$62.93.
- [3] **Landlord's claim for re-keying locks.** The landlord seeks to recover \$131.00 as the cost of re-keying locks. The parties agreed that the landlord received one key back from the tenant on October 2 and the remaining keys on October 8. The landlord testified that she re-keyed the locks on October 18 because she was concerned that the tenant had made copies of the keys. The tenant was responsible to return the keys which were issued to him. I find that he met his obligation and cannot be held liable for the landlord's choice to re-key the locks. The claim is dismissed.
- [4] **Landlord's claim for wall repair.** The parties agreed that the landlord was entitled to recover \$263.20 paid to repair the wall of the rental unit. I award the landlord \$263.20.
- [5] **Landlord's claim for floor repair.** The landlord seeks an award of \$571.20 which is the estimated cost of repairing the floor of the rental unit. The landlord provided photographs showing damage to the floor. The tenant testified that at the time he moved into the rental unit, the area was covered by the landlord's sofa which he purchased from her. Upon moving the sofa some months later, he discovered the damage which he claimed pre-dated the tenancy. The parties agreed that there was no condition inspection performed at the outset of the tenancy. The landlord bears the burden of proving that the damage was caused by the tenant. In the absence of evidence to corroborate her testimony, I find that she has failed to meet that burden and accordingly I dismiss the claim.
- [6] **Landlord's claim for occupational rent.** The landlord seeks to recover \$258.00 in occupational rent for October 1-8 as she did not receive all of the keys to the unit until October 8. The landlord testified that although she received one key on October 2 and placed at least one of her own personal belongings in the unit on that date, she was unaware that the unit had been completely vacated until the tenant returned the keys on October 8. The tenant testified that gave the landlord a key on October 2 so she would have access to the unit and stated that he had completely vacated the rental unit on October 3. The tenant stated that he was unable to meet together with her to return the remaining keys until October 8. I find that while the unit may have been vacated on October 3, the tenant did not fully surrender possession of the unit until October 8. I award the landlord \$258.00 in occupational rent.

- [7] **Landlord's claim for cleaning.** The landlord seeks to recover \$240.00 which she claims as the cost of 8 hours of cleaning at a rate of \$30.00 per hour. The landlord claimed that cleaning included "extensive sanitation" and stated that there were a number of areas in the rental unit which required significant attention. The tenant testified that he thoroughly cleaned the rental unit and provided photographs showing the condition of the unit. In the absence of evidence to corroborate her claim, such as photographs or a report resulting from a condition inspection in which the tenant participated, I find that the landlord has failed to prove that the unit required additional cleaning. Further, I am troubled by the use of the term "sanitation" as it implies that the landlord expected the tenant to leave the rental unit sterile rather than reasonably clean as is required under the Act. The claim is dismissed.
- [8] **Landlord's claim for accommodation costs.** The landlord seeks an award of \$500.00 as the cost of accommodation for the month of October. The landlord testified that because the tenant did not vacate the unit on October 1, did not adequately clean the unit and left the wall in a state that required repair, she was unable to occupy the unit for the month of October. The landlord testified that she paid her friend \$500.00 for accommodation for that month. The landlord's friend appeared as a witness and confirmed that she had paid him \$500.00. The tenant argued that there was no reason why the landlord could not have resided in the rental unit after he vacated. I find that the tenant left the unit reasonably clean and find that the wall repair was not so extensive that it prevented one from residing in the unit while it was repaired. I find that the landlord knew on October 2 that the tenant had almost completed moving out and that if she did pay her friend \$500.00 to accommodate her for the month of October, it was unreasonable to do so as she should have known that the unit would be available for occupancy within a very short time. I have difficulty accepting that the landlord paid her friend \$500.00. This was not part of her original claim, it appears to have been added as an afterthought when she filed her evidence on March 1 and the landlord provided no receipt for monies which allegedly changed hands. For these reasons I find that the claim is unfounded and I dismiss the claim
- [9] **Filing fees.** The parties each seek to recover the \$50.00 fee paid to bring their applications. I find that they are each entitled to recover the fees and I award them each \$50.00.

Conclusion

In summary, the tenant has been awarded \$1,050.00 and the landlord has been awarded \$634.13. Setting off the claims as against each other results in a balance of \$415.87 payable by the landlord to the tenant. I grant the tenant an order under section 67 for \$415.87. 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: March 10, 2011

Residential Tenancy Branch