



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, O

Introduction

This hearing was held to hear the landlords' application for a Monetary Order for damage to the unit, site or property and a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and other issues.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenant on November 04, 2010. The tenant was deemed to be served the hearing documents November 09, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

A significant amount of documentary evidence, visual evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

The tenancy ended on February 28, 2007. The tenant filed her application on February 28, 2009.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on November 01, 2005. A written tenancy agreement was in place. Rent for this unit was \$1,800.00 per month due on the first of each month. The tenant paid a security deposit of \$900.00.

The landlord testifies that the tenant gave notice to end her tenancy on November 02, 2008 and moved from the rental unit on November 03, 2008. The landlord testifies she has a recorded message from the tenant on her cell phone dated November 03, 2008 but is unable to present this recording in evidence. The landlord testifies that in this recording the tenant states she has moved out on November 03, 2008. The landlord testifies as the tenant did not give one clear months notice to end her tenancy she could not legally end the tenancy until November 30, 2008.

The landlord testifies that she was unable to file her application any sooner as she was going through a custody battle and coping with her children's illness. The landlord testifies that the tenant caused damage to her fridge, failed to clean the carpets and caused damage to the carpets, she removed a carpet runner from the property, caused damage to the walls, the garage door opener a kitchen cupboard door, the in house vacuum, the bathroom floor, the hallway floor, the office ceiling light. She failed to replace burnt out bulbs, failed to replace a rosemary bush that was dead, removed a miniature Japanese maple tree, removed a jogging stroller, removed a wooden arbour, removed Christmas lights and failed to return one set of keys. The landlord also seeks childcare costs for having to show the house to prospective tenants due to the tenants' behaviour at a previous showing. The landlord seeks to recover \$13,702.42.

The tenant testifies she actually moved from the rental unit towards the end of October, 2008 and did a final clean and went back to meet the landlord to take part in a move out condition inspection on November 02, 2008. The tenant testifies she made many attempts to contact the landlord and the landlords' boyfriend to inform them that she had moved out and left a message on the landlords' boyfriends' telephone on November 02,

2001. The tenant testifies she also left a message on the landlords' cell phone on November 03, 2008 to inform her that she had moved out and to try to arrange a time to meet to do the inspection of the rental unit. The tenant testifies the landlord did not return her calls. The tenant states the landlord has waited over two years to file this claim and by doing so she has prejudiced the tenant who does not now have all her evidence available.

The tenant testifies that she rented a carpet cleaning machine on November 01, 2008 and at that time the unit was empty of her belongings. She has provided a copy of the receipt for this in her evidence which shows the date of November 01, 2008. The tenant has also provided photographs showing the unit empty. The tenant testifies that she does not recall any significant damage at the rental unit other than normal wear and tear and denies removing any of the landlords' belongings. The tenant also denies causing any damage to the garage door opener and states the landlord was aware that this broke down within a month of her tenancy. The tenant states the carpet runner was traded for her washer/dryer with the landlord at the start of her tenancy. The tenant testifies that the rosemary bush was not killed by her negligence and she has no recollection of a maple tree. The tenant also states the landlord never asked her for the jogging stroller but she did come to the rental property and remove items from the garden. The tenant testifies that the first time she plugged the Christmas lights in, they "popped" so she removed them and placed them in a box in the garage and she believes the landlords' boyfriend removed them. The tenant testifies that her photographs show the rental unit was left in a good, clean and tidy condition. The tenant testifies that she is not responsible for the landlords' childcare costs.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I will deal with the time frame of the landlords' application. The *Residential Tenancy Act*: s. 60(1)(2) states that:

Latest time application for dispute resolution can be made

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

To clarify this I refer the applicant to the *Interpretation Act*: s. 25(2)

Calculation of time or age

(4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

The landlord has provided no evidence to show that the tenancy ended on November 03, 2008, and the tenant has stated she was fully moved out and the unit was cleaned by November 02, 2008. When one party's evidence contradicts the other, the burden of proof falls to the party making the claim. In this matter the landlord has provided no corroborating evidence to show the tenant moved out on November 03, 2008. Therefore the latest the landlord could have filed her application should have been November 01, 2010 to fall within the two years' time frame.

The *Residential Tenancy Act*; s. 66(1) allows a Dispute Resolution Officer to extend a time limit only in exceptional circumstances. I asked the applicant if she could determine any exceptional circumstances which would allow me to extend the time limit for her to file her application. However, the landlord was unable to provide any evidence to show that she had 'exceptional circumstance' and I am unable to extend the time limit in this matter.

Conclusion

It is my decision that the landlord filed her application outside the two year time limit as specified under s. 60(1) of the *Act*. Therefore, the landlords' application is dismissed without leave to reapply.

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 08, 2011.

Residential Tenancy Branch