



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

For the tenant – MNDC, MNSD, FF

For the landlords – MND, MNR, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential tenancy Act* (Act), regulation or tenancy agreement and seeks to recover double her security deposit and her filing fee. The landlords seek a Monetary Order to recover unpaid rent and for damage to the rental unit and to recover their filing fee.

I am satisfied that both parties were properly served pursuant to s. 89 of the Act with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover double the security deposit?

- Are the landlords entitled to a Monetary Order for damage to the rental unit?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

Both parties agree that this tenancy started on August 01, 2010. This was a fixed term tenancy which was due to end on July 31, 2011. Rent for this unit was \$1,600.00 per month and was due on the first of each month. The tenant paid a security deposit of \$800.00 on July 12, 2010. The tenant sent the landlord her forwarding address in writing on October 28, 2010 and the landlords confirmed receipt of this. No move in or move out condition inspections were completed at the start or end of the tenancy.

The tenants' application

The tenant testifies that she gave the landlords notice to end her tenancy as the house was not safe due to the landlords failure to repair locks. The tenant seeks to recover double her security deposit as the landlords did not return her deposit of \$800.00 within 15 days of receiving her forwarding address on October 28, 2010.

The tenant seeks compensation for defective locks on the hot tub room which would allow anyone to enter the property and then gain access to her bedroom as the dead bolt on her bedroom door was also faulty. The tenant states there was an occasion when a stranger did enter the house and she had to get him to leave. The tenant testifies the lock on the hot tub door is an internal latch which does not lock and the lock on her bedroom door did not fit correctly as the wood was rotten. The tenant states her dog is just a puppy and could not damage the door frame as suggested by the landlord as it could not possible reach that high.

The tenant testifies that she asked the landlord many times to fix these locks but they failed to make these essential repairs.

The tenant seeks compensation for not having full use of the house as the landlords did not remove all their belongings from the house and yard. The tenant testifies the landlords had left an old fridge and television set and building supplies were scattered around the house and yard. The tenant also states she did not have use of the garage as it was full of the landlords' belongings.

The tenant also seeks compensation from the landlords for her time and gas in having to drive to the landlords address provided for service of the hearing documents because the address they gave the tenant was incorrect. The tenant states she had a 45 minute drive to the landlord's town and then had to drive around for another hour searching for the address provided only to find it did not exist. She states she then had to contact the landlords to obtain the correct address. The tenant seeks \$272 for time off work to do this trip and gather evidence.

The landlords dispute the tenants claim, they testify that the tenant gave them Notice to End Tenancy on September 29, 2010 and they think the tenant moved out on October 16, 2010. The landlord agrees they did receive the tenants forwarding address in writing and they withheld money from her security deposit for unpaid rent and damages to the unit. The landlords testify that they tried to file an application to keep the security deposit within the 15 days but could not find the tenants roommates to serve them with Notice of the hearing. The landlords testify that they did file an application on November 14, 2010 but did not apply to keep the security deposit.

The landlords dispute the tenants claim that there was a problem with the locks to her unit. The landlords testify that the hot tub room had a dead bolt on one side of the door and the locks on the tenants' bedroom, reached through the hot tub room, did engage which would have made her room secure. The landlord's state that the tenants' bedroom door frame was damaged and state they do not remember it being damaged before the tenant moved in and suggest this damage was caused by her dog.

The landlords testify that the tenant has never given them a written request to do any repairs to the rental unit. The landlords also testify that any belongings stored at the unit were stored in a cupboard under the stairs, stacked outside by the garage and in the garage which was not part of the tenancy agreement. The landlords also state they asked the tenant at the start of the tenancy if she wanted the fridge and large television set and if not they would come up and remove them. The landlords state the address given to the tenant was a mistake. The female landlord states she inadvertently gave the tenant part of her old address and not the correct new address. The landlord states it was the tenants' choice to hand deliver the hearing documents as if she had sent them by registered mail they would have reached the landlords.

The landlord's application

The landlords' testify that the tenant did not pay the rent owed for October, 2010. They state the tenant paid \$1,000.00 on October 01, 2010 which left a balance of rent owed of \$600.00. They state the tenant told them she would pay the outstanding rent when she got paid again but failed to do so. The landlords testify that they agreed the tenant could sublet or find new tenants to take over the rental unit and/or her lease. They state the tenant did find new tenants and the tenant gave them an application form to review for the new tenants on October 08, 2010. They state the tenant told the new tenants that they could rent the property before the landlords had carried out checks on them or accepted them as tenants. They state these tenants moved into the rental unit on October 29, 2010. The landlord's state as these tenants moved on this date they have deducted two days from the rent owed by the tenant at \$52.04 per day and now seek a Monetary Order for \$495.92.

The landlords testify that the tenant now claims these tenants wanted to move into the unit on October 15, 2010 but when they met with the new tenants they did not want to move until the end of October as they were paying rent elsewhere. They state these new tenants did not want to take over the lease but did sign a new lease with the landlords.

The tenant testifies that the landlord did agree she could sublet the unit and agreed she could collect her security deposit from the new tenants. The tenant testifies the new tenants did agree to take the unit from October 15, 2010 but the landlord did not complete things their end to make this possible. The tenant agrees she did not pay the remainder of rent for October, 2010 as she thought the new tenants would be moving in on October 15, 2010. The tenant states she could not fax the new tenants application form to the landlord before October 08, 2010 as the fax number she had for the landlords was wrong.

The landlords seek to recover the cost of damages from the tenant. They claim the tenant left a pink mark on the toilet seat which cannot be removed and they seek \$30.00 for a new toilet seat. The landlords claim the tenant painted two murals on the walls of the unit without permission and they seek \$100.00 to rectify this. The landlords state a cable wire was drilled through the walls of the unit without permission and seek compensation to rectify this damage of \$50.00. The landlords claim the tenant did not return the keys to the unit at the end of the

tenancy and seek to recover \$150.00 for rekeying. The landlords also state the tenant damaged the plastic of the hot tub cover and seek to recover \$20.00.

The tenant disputes the landlords claim. She states the unit was professional cleaned at the end of her tenancy and has no idea what the pink mark is on the toilet seat. The tenant states she had permission from the landlord to paint the walls and the murals are water based paint which can be washed off. The tenant claims she did not do this because the new tenants indicated that they liked them. The tenant did not address the cable through the walls or the hot tub cover but states she did return all the keys to the unit and left them in the front bay window as the landlord did not meet with her at the end of her tenancy to do a move out condition inspection.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants' claim for double the security deposit; s. 38 of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant

The landlord's agree that they did receive the tenants forwarding address in writing on October 28, 2010. As a result, the landlord had until November 12, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the tenants security deposit consequently, pursuant to section 38(6) of the *Act* the landlords must pay the tenant double the amount of her security deposit to the sum of **\$1,600.00.**

With regard to the tenants claim for money owed or compensation for damage or loss; when making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations 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.

In this matter I am not satisfied that the tenant has met the burden of proof. The tenant has not provided documentary evidence to show that she notified the landlord in writing of the defective locks so they could have opportunity to repair or replace them. The tenant has provided no evidence to show she did not have full use of the rental unit due to the landlords belongings left at the unit and she has provided no evidence to verify the time she lost at work or the mileage for her claim for gas expense in delivering the hearing package to the landlords rather than sending them by registered mail. Consequently this section of the tenants claim is dismissed.

With regard to the landlords claim for unpaid rent; The tenant argues that she found new tenants to take over her lease for October 15, 2010 and she had paid \$1,000.00 in rent for October. The landlords argue that although the tenant did find new tenants they had not approved them because they did not receive the application until October 08 and the new tenants did not want to start their tenancy until the end of October, 2010. In this matter I refer both parties to the Residential Tenancy Policy Guidelines # 5 which states: In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. In this matter it would be reasonable to assume that although the tenant did find new tenants to take over her tenancy that the new tenants did not want to re-rent the unit until the end of October, 2010 as they were still paying rent on their old unit for October. Although the tenant did attempt to mitigate her loss by finding new tenants to take over her lease she did end her tenancy contrary to her fixed term tenancy agreement pursuant to s. 45 of the *Act*. Therefore, I find the landlords are entitled to recover unpaid rent up to October 29, 2010 of **\$495.92** and this sum will be deducted from the monetary award issued to the tenant.

With regard to the landlords claim, for damage to the rental unit I again use the same test as above for damage or loss claims. In this matter I find the landlords have not met the burden of proof in all aspects of their claim. The landlords did not complete either inspections at the start

or end of the tenancy to determine what, if any, damages or cleaning were caused during the tenancy. The landlords have only provided verbal estimates for the cost of replacing the toilet seat, repairing the walls due to wiring, repair to the plastic cover for the hot tub, rekeying locks and the cost of removing the murals from the walls. Therefore, the landlords application for damages is dismissed.

With regard to the landlords application for a Monetary Order for \$150.00 because the tenant did not return the keys to the unit; In this matter, the landlord has the burden of proof and must show that the tenant did not return the keys. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not met the burden of proof and as a result, this section of the landlords claim is dismissed.

Both parties have applied to recover their filing fee from the other party. However as both Parties have only been partially successful with their claims I find they must both bear the cost of filing their own applications and this section of their applications are dismissed.

The tenant will receive a Monetary Order for the following amount pursuant to s. 38 and 67 of the Act:

Double the security deposit	\$1,600.00
Total amount due to the tenant	\$1,104.08

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,104.08**. The order must be served on the landlords and is enforceable through the Provincial Court as an order of that Court.

I HEREBY FIND in partial favor of the landlord's monetary claim. The amount of **\$495.92** has been deducted from the amount owed to the tenant.

The remainder of the tenants' application is dismissed without leave to reapply

The remainder of the landlord's 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 14, 2011.

Residential Tenancy Branch