



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, FF
Tenant: MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution, both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the landlord; his two witnesses; the tenant and her advocate.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided if the tenant is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties submitted a copy of a tenancy agreement signed by the parties on August 25, 2010 for a month to month tenancy beginning on August 25, 2010 for a monthly rent of \$650.00 due on the 25th of each month and confirms that a security deposit of \$325.00 was paid on August 25, 2010. The tenancy ended on November 27, 2010.

The landlord testified that when the tenant moved in to the rental unit and that they completed a walk through to inspect the condition of the unit and that nothing was identified as being a problem. The tenant testified that no move in inspection was completed. Both parties agreed the landlord did not provide a written move in condition inspection report to the tenant.

The landlord and his witness testified that when the tenant moved out, although she was there when the landlord came by, she refused to walk through the rental unit for a move out inspection. The tenant testified that the landlord knew she was in a hurry the day of the move out and that she was not able to attend a move out inspection at the time the landlord was there. She further testified the landlord did not offer her any other times to complete the inspection and that the landlord never provided her with a copy of the move out inspection report.

The landlord testified that he did not complete a report but took photographs and considers these photographs as the report on the condition of the rental unit on the day the tenant moved out.

The landlord's claim for damage to the rental unit is outlined in this table:

Description	Amount
Replace linoleum	\$200.00
Replace toilet	\$250.00
Replace shower head	\$50.00
Drywall Patch	\$150.00
Paint	\$300.00
Replace blinds	\$90.00
HST	\$124.80
Total	\$1164.80

The landlord testified that the tenant was responsible for a cut in the linoleum around the access area to the crawl space. The access is under a section of the linoleum that is cut out so that it can be lifted when access is required. The cut is at the corner of this cut out piece. The tenant asserts it was the landlord who cut this when accessing the crawl space three days prior to the end of the tenancy.

The landlord states the toilet seat was loose and required replacing; that the tenant broke the shower head and it required replacing; that the tenant had put in a "couple of holes" that required patching and therefore painting; and that the tenant damaged the blinds.

The tenant asserts that all of these items were in this condition when she moved in to the rental unit and that she should not be held responsible for their replacement and repair.

The landlord asserts that as a result of a posting the tenant put on Craigslist espousing that the landlord was a criminal and a bad landlord; he had been unable to rent the unit

since she has left. The landlord is seeking compensation for this in the amount of \$650.00. The landlord testified that the unit is still vacant but he no longer is attempting to rent it out as his daughter is getting married in June 2011 and will need the unit.

The tenant contends the landlord told her when she moved in that the rental was only for a short period as he would need it when his daughter got married and that the landlord had no intention of re-renting the unit out.

The landlord is also seeking compensation totalling \$44.32 for costs associated with evidence and service of documents to prepare for this hearing.

The tenant is seeking compensation in the form of the return of three months' rent and her security deposit less two days per diem rent for when she moved out after the start date of the rental period, in the amount of \$2,257.00.

The tenant seeks this compensation because the landlord failed to complete repairs that had been requested; noise disturbances during parties and the landlord's son next door to one of the tenant's bedroom; invasion of privacy by people looking through the glass door that separated the landlords' residence and the rental unit; lack of use of internet; not allowing her to install her washing machine; and for restricting parking throughout the tenancy.

The landlord testified that while he acknowledges the family had had gatherings in their home they had been mostly dinner parties and were over by 10:00 p.m. The tenant asserts that some gatherings would go on all night at least until 2:00 or 3:00 a.m.

The landlord testified that when the tenant complained about the son making noise late at night in the room adjacent to the tenant's second bedroom they spoke with the son to stop it and moved him into another room. The tenant stated she could not use the room as a bedroom because of the noise and ended up using it as storage.

The tenant acknowledged that the landlord did place a curtain on the landlord's side of the glass door but that at times she would catch the landlord's family looking through the current spying on her. The tenant testified that she did not put a curtain on her side of the glass door.

The tenant claimed that she could not access the wireless internet service that the landlord said she could use on a regular basis and often had to go out to use others wireless access. The tenancy agreement did not include internet service as being provided by the landlord.

The tenant noted that the landlord would not pay for the installation of the tenant's washing machine in the rental unit. The landlord testified that he gave the tenant approval to install the washing machine as long as she paid for the plumbing required to ensure proper drainage. The tenancy agreement did not include laundry as being provided by the landlord.

The tenant testified that on many occasions she was not allowed to use the parking because the landlord's family had 5 vehicles and they would often fill up the parking before she could access. The landlord testified the tenant was never restricted in her use of parking.

The tenant testified that the landlord was constantly showing potential tenants the rental unit after she had given notice to end the tenancy without providing any notice and that the landlord was doing so an unreasonable number of times, to the point where she was being disturbed, sometimes on a daily basis.

Analysis

A party making a financial claim for compensation for damage or loss must provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken, if any, to mitigate any damage or loss.

I accept that a written condition inspection report was not completed by the landlord at either move in or move out inspections as required by Sections 23 and 35 respectively and as a consequence the landlord's right to claim for damage against the security deposit is extinguished as per Sections 24 and 36 respectively. As a result, I find the tenant is entitled to the return of her security deposit.

However, this does not preclude the landlord from claiming for any losses or damages resulting from the tenancy.

As to the landlord's claim for damages to the rental unit, in the absence of any documentary evidence from the start of the tenancy to show the condition of the rental

unit at that time, I find the landlord is unable to attribute any damage whatsoever to the tenant during the tenancy and I dismiss this portion of the landlord's claim.

As to the landlord's claim for lost rent for the month of December, 2010, I accept that the tenant's actions of posting negative comments and remarks regarding the landlord on Craigslist did have an effect on the landlord's ability to re-rent the unit.

As per the tenant's testimony that she was constantly disturbed by the landlord showing the rental unit to potential tenants in the last two months of the tenancy, I do not accept the tenant's assertion that the landlord did not intend to re-rent the unit. I find it unlikely that a landlord would show the unit to several potential tenants if he did not intend to rent the unit to a new tenant. For these reasons, I find the tenant is responsible for rent for the month of December 2010.

The costs associated with the landlord's preparation for this hearing are a matter of choice in how he wanted to present his case and serve his evidence to the tenant and therefore not recoverable through this process, I dismiss this portion of the landlord's application.

As to the tenant's application, I find that in relation to the complaints of noise disturbances; invasion of privacy and restricted parking the parties dispute the events. In the case of verbal testimony, I find that where testimony is clear and both the landlord and tenant agree on the interpretation, there is no reason why such testimony cannot be relied upon.

However when the parties disagree with what occurred, the testimony, by its nature, is virtually impossible for a third party to evaluate the veracity of the statements. In the absence of any other evidence to corroborate the tenant's testimony regarding these issues, I find the tenant has failed to establish any loss or damage.

In relation to the tenant's claim regarding the use of internet or the landlord providing plumbing for her to install her own washing machine, as these were not provisions under the tenancy agreement, I find the landlord was under no obligation to provide these services and therefore the tenant has not establish any loss or damage resulting from a violation of the tenancy agreement.

As to the loss of privacy regarding the landlord's family spying on the tenant through the glass door, I find the tenant failed to mitigate any loss of privacy by not installing a curtain on her side of the door to ensure no one could see into her unit.

In relation to seeking compensation for the landlord entering the unit to show the rental unit to potential renters, I find it is not unreasonable for a landlord to show the rental unit to prospective tenants when a tenant gives notice to end a tenancy.

The tenant asserts the landlord did not always provide adequate notice to enter when he wanted to show the unit, however, she also states that she was never informed if a viewing was going to be cancelled. I find the tenant's testimony to be contradictory – if she was not provided with notice of a viewing why would she expect to be notified if one was cancelled. As a result, I find the tenant suffered no loss for the landlord showing the unit to potential tenants.

For the reasons noted above, I dismiss the tenant's application for compensation in an amount equivalent to three months' rent.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$700.00** comprised of \$650.00 rent owed and the \$50.00 fee paid by the landlord for this application.

Despite my finding that the tenant is entitled to the return of the security deposit, I order the landlord may deduct, in accordance with Section (2)(b), the security deposit and interest held in the amount of \$325.00 in partial satisfaction of this claim.

I grant a monetary order in the amount of **\$375.00**. This order must be served on the tenant and 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: April 14, 2011.

Residential Tenancy Branch