



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord to obtain an Order of Possession, for a Monetary Order for unpaid rent, for damage to the unit, site or property and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlord has also applied to keep the tenants security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenant on May 17, 2011.

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:

Preliminary Issues

The landlord withdraws his application for an Order of Possession as the tenant has vacated the rental unit. The landlords' application to keep the tenants security deposit is dismissed as this matter was previously dealt with at the tenants hearing held on June 10, 2011.

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 unpaid rent and utilities?
- 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 August 01, 2010. This was a fixed term tenancy which was due to expire on July 31, 2011. Rent for this unit was \$675.00 per month which was due on the first day of each month in advance. The tenant paid a security deposit of \$337.50 on August 01, 2010.

The landlord testifies that he suffered a loss of rental income because the tenant did not notify him when he would be vacating the unit. The landlord testifies that he had served the tenant with a One Month Notice to End Tenancy for cause which the tenant had initially disputed. The landlord claims that as the first hearing for the tenants application to dispute the Notice was adjourned and the hearing was reconvened after the tenant had moved out. The landlord states he could advertise the unit for rent as that he had no idea when or if the tenant would be moving out until he left on April 30, 2011 leaving a note and the keys to the unit on the doorstep.

The landlord states the unit was not re-rented until June 01, 2011 and he therefore he lost a months' rent in May 2011. The landlord states the tenant should be responsible for this lost rental income as he misled the landlord as to his intentions.

The landlord agrees that he did not conduct a move in or a move out condition inspection in accordance with the *Act* but states the tenants note left on the door step acknowledges that there was a chip missing from the table and one chair. The landlord states he agrees the tenant did a basic clean up of the unit but states the unit was not left in a pristine condition. The landlord testifies that he noticed other things were missing or damaged such as a toilet

brush and a shelf. He states the toilet seat hinge was broken, the stove top was left dirty, the windows had not been cleaned, the floors had been washed but were not clean, book shelves and a lamp were left dusty, there was dirt and debris under the couch and chair cushions, wood chips in the outside area had only been partially cleared up, there were wood chips inside the entrance, there were cobwebs on cabin ceilings, the outside fire pit was not cleaned out, the smaller A frame cabin the tenant had used had not been cleaned and there was evidence of coffee or coke stains in that cabin, the outside walkway had not been cleaned and there was bark and wood chip debris outside the woodshed. The landlord states it took 10 hours to clean up after the tenant and seeks \$20.00 per hour for this work to the sum of \$200.00. The landlord states in his tenancy agreement the tenant was responsible for the normal upkeep surrounding the cabin and woodshed and for snow removal on walkways and drive.

The landlord had originally applied to recover outstanding utility bills but states these have all now been paid by the tenant.

The tenant disputes the landlords' claims. The tenant testifies that he did not mislead the landlord in any way. He states when he first received the One month Notice to End Tenancy he did apply to dispute it but after the landlord confrontations and actions resulting in a loss of quiet enjoyment of the rental unit he decided he would move out on the effective date of the Notice. The tenant testifies that the forwarding address he gave the landlord was his friends address and this was where he eventually moved to. The tenant states he is under no obligation to give the landlord Notice to end the tenancy due to the fact he was served with a One Month Notice.

The tenant disputes the landlords' claims for cleaning. He testifies that he hired a professional cleaner to help him clean the unit and other friends also helped. He states the stove top was not left with food scraps as it had been covered in foil and the foil was removed. He states one of his helpers cleaned the windows, the floors were all washed, the shelves cleaned, the lamps cleaned the chair cushions and couch were cleaned inside and underneath, the wood chips were all cleared inside and out, he states his mother stayed in the A frame for 10 days but does not drink either coffee or coke, the bark and woodchips

were cleaned up from where the tenant split wood but any other areas that had chips were caused from the landlord splitting wood and the tenant states he should not be held responsible for the landlords mess, The walkway has loose stones so would be hard to sweep up and the cobwebs were vacuumed from every reachable corner of the house. The tenant states the toilet seat hinge was broken as it had rusted through and the fire pit had some ash and a partially burnt log left in it. The tenant agrees there was a chip out of the table and chair which he only noticed as he was moving out and told the landlord he would reimburse him for the repair when he knew what it was.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for unpaid rent or loss of income for May, 2011; I refer both parties to the Residential Tenancy Policy Guidelines #3 which discusses rent issues and says that when a **month to month** tenancy is ended for cause, even for a fundamental breach, there can be no claim for loss of rent for the subsequent month after the notice is effective, because a notice given by the tenant could have ended the tenancy at the same time.

In this case the tenancy was a fixed term tenancy and the tenant is responsible for rent up to the end of the fixed term or up to the date the unit was re-rented. The landlord argues that as the tenant disputed the Notice and his hearing was reconvened after the date the tenant moved out the landlord could not reasonable be expected to know when he could advertise the unit for rental as he did not know when or if the unit would be available until April 30, 2011. Consequently, it is my decision that as the unit was re-rented for June 01, 2011 and the tenant is responsible for unpaid rent for May, 2011.

With regard to the landlords claim for cleaning and damages; the onus is on the landlord to prove a 4-part test for damages:

1. That the damage or loss exists;

2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have no evidence before me with respect to the fact that the damage exists or was caused by the actions or neglect of the tenant. The landlord did provide some photographic evidence for the hearing held on May 09, 2011, which was the tenants' application. While I accept that these photographs were misplaced by the Residential Tenancy Branch the landlord has not provided any photographic evidence for this hearing. The landlord also failed to complete a move in or a move out condition inspection report. A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if he has left a rental unit unclean at the end of the tenancy. The landlord has also failed to provide actual or even estimated amounts for the repair to the toilet seat, or the damage to the table and chair.

Section 32(2) of the *Act* states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and when one persons evidence is contradicted by the other then the burden of proof falls to the person making the claim to provide additional corroborating evidence that the tenant did not leave the rental unit or property in a reasonable standard of health, cleanliness or sanitary condition. Therefore, I find that the landlord has failed to satisfy elements 1, 2, and 3 of the test, and the landlord's claim for damages is therefore dismissed without leave to reapply.

As the landlord has been partially successful with his claim I find he is entitled to recover his \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$725.00** comprised of \$675.00 in unpaid rent and \$50.00 filing fee. The order must be served on the respondent 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: June 15, 2011.

Residential Tenancy Branch