



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for monetary orders for unpaid rent, for damage to and cleaning of the rental unit, for compensation under the Act and the tenancy agreement, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on January 1, 2004, with the parties entering into a written tenancy agreement. The Tenant paid the Landlord a security deposit of \$318.00 on January 1, 2004. At the end of the tenancy the monthly subsidized rent was \$526.00.

On June 7, of 2010, the Landlord served the Tenant with a 10 day Notice to End Tenancy for unpaid rent in the amount of \$526.00. There is no evidence that the Tenant filed an Application for Dispute Resolution to dispute the Notice, and the Tenant vacated the rental unit. The Agent for the Landlord testified that the tenancy ended on June 30, 2010, and that a condition inspection report was performed on July 5, 2010. The Tenant did not attend the outgoing inspection.

The Landlord testified that the Tenant returned her keys to the rental unit and refused to provide a forwarding address.

The Landlord is alleging it has incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord claims as follows:

a.	Rent for June of 2010	526.00
c.	Cleaning of rental unit	217.50
d.	Window screen repair	20.00
e.	Filing fee	50.00
	Total claimed	\$981.50

The Tenant testified she did not provide her forwarding address to the Landlord at the end of the tenancy, as she did not know she had to. The Tenant testified that she mailed the Landlord her forwarding address on February 7, 2011. She alleged the Landlord did not file their claim within the fifteen days required under the Act.

The Tenant testified that she cleaned the rental unit before she vacated on June 15, 2010. She testified she turned in the keys on June 15, 2010. She testified that she told the Landlord they could keep her security deposit for the half month of rent.

The Tenant explained she borrowed a friend's carpet cleaner and shampooed the carpets using two containers of soap. She testified that she felt the Landlord had exaggerated the cost of cleaning the rental unit.

The Tenant further testified that the Landlord harassed her by giving her 10 day Notices to End Tenancy whenever her rent was late. She testified that a simple letter or a note would have been sufficient but she felt harassed when the Landlord gave her a Notice to End Tenancy.

The Tenant was also upset that the Landlord turned the debt over to a collection agency. The Tenant testified that she was told by the Landlord and the collection agency that she could no longer claim against the security deposit, and that when she phoned the Branch to get information she was told she could claim for the return of the deposit for up to one year after the tenancy, but that she had to provide the Landlord with her forwarding address in writing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has breached the Act by failing to pay rent when it was due.

I grant the Landlord an order for the rent, however, I dismiss the other portions of the Landlord's claims due to insufficient evidence for the following reasons.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Landlord, 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.

Here the Landlord did not provide copies of any receipts or invoices to verify the actual loss or damage claimed, and therefore, I find the Landlord has insufficient evidence to verify the claims for cleaning or damages to the rental unit.

I find that the Tenant extinguished her right to the return of the security deposit by failing to participate in the outgoing condition inspection report, as required under section 36 of the Act.

The Tenant served the Landlord with her forwarding address by mail, sent on February 7, 2011. Under the Act mail is deemed received five days later, and therefore, the Landlord is deemed to have received it on February 12, 2011, which would correct to the next business day, February 14, 2011. The Landlord filed the Application on February 25, 2011, which is within the required 15 days of section 38.

I do not find the Tenant suffered harassment when the Landlord gave her Notices regarding late payments of rent. The Landlord is entitled to deliver such Notices under the Act and in any event, the Tenant would have avoided getting any Notices had she paid her rent on time as obligated under the Act and tenancy agreement.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Landlord is entitled to the full month of rent for June 2010, as set out in the tenancy agreement and under the Act. Therefore, I find that the Landlord has established a total monetary claim of **\$576.00**, comprised of one month of rent and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit and interest of **\$329.25** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$246.75**

This order 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: June 09, 2011.

Residential Tenancy Branch