



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by both the landlord and the tenant. The landlord was seeking a monetary order for \$1,100.00 loss of rent as well as an order to retain the \$550.00 security deposit in satisfaction of the claim. The tenant was seeking monetary compensation in the amount of \$4,859.00.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are: Is the landlord entitled to monetary compensation for loss of rent as damages? And Is the tenant entitled to monetary compensation in damages?

Background and Evidence

The landlord testified that the tenancy was to begin on February 15, 2011, but the tenant was permitted to bring in some furnishings earlier. The landlord testified that the move in inspection was done on February 19, 2011 and submitted a copy of the report into evidence. The move-in report showed that the carpet was stained and other deficiencies and was signed by both parties on February 19, 2011. The landlord conceded the carpet had pre-existing stains, but stated the flooring was fully cleaned. Invoices showed that the carpet had been cleaned twice just prior to the tenancy.

The landlord testified that on February 15, the tenant gave written Notice to move out effective April 1, 2011. The landlord testified that the tenant's Notice was dated February 15, 2011, which was prior to the move-out inspection of February 19, 2011. However, according to the landlord, this Notice was actually received by the landlord on February 23, 2011 and they immediately placed advertisements, copies of which are in evidence. The landlord testified that the tenant suddenly vacated on February 28, 2011 and did not pay rent for March 2011. The landlord testified that, due to the short notice to vacate, the landlord lost rent for March and the unit was not re-rented until May 1, 2011. The landlord is seeking compensation of \$1,100.00 for March 2011.

The tenant disputed the landlord's claim for lost rent on the basis that they had no choice but to move because the rental unit was not fit for habitation. The tenant stated that, after they moved their furnishings in, she went on vacation while her children remained living in the unit. According to the tenant, when she returned, she found that the carpet was highly contaminated by mould. The tenant testified that all members of the family began to exhibit serious medical symptoms. The tenant testified that they were advised by their doctor to vacate immediately to preserve their health.

The tenant testified that the landlord had violated the Act and the contract by failing to ensure that the unit was safe to live in and this resulted in the tenant having to move without giving the one-month advance notice required under the Act. The tenant stated that, once they moved out, all of their symptoms disappeared. The tenant's position is that the landlord is not entitled to be compensated for the loss of the one month rent because the landlord had knowingly exposed them to the a hazardous situation and that the tenant is therefore entitled to be compensated for damages for having to move out including including \$1,1000.00 for double the security deposit, a rent abatement of \$759.00 for devalued tenancy, and \$3,000.00 other compensation.

Analysis: Landlord's Claim

I find that the tenant gave written Notice to End Tenancy for the end of February 2011, which was not received by the landlord until the 23rd day of February 2011. Section 45 of the Act permits a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and; (b) is the day before the day in the month that rent is payable under the tenancy agreement. (my emphasis)

I find that in this instance the notice given by the tenant was not in compliance with the Act and the landlord suffered \$1,100.00 lost rent for half of the month of March 2011 as a result. Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Analysis Tenant's Claim

With respect to the tenant's claim for double the security deposit, I find that these funds are always considered to be a credit held in trust for the tenant. Section 38 of the Act states that, within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or

make an application for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit.

In this instance, I find that the landlord made an application for a monetary compensation and to retain the deposit on March 23, 2011. The tenant did not provide adequate proof that the landlord had failed to apply for dispute resolution more than 15 days after tenant's written forwarding address was given to the landlord. Accordingly, I find that the tenant is not entitled to double the security deposit but will be credited with the original \$550.00 deposit now being held.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

With respect to the \$759.00 rent abatement being requested, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement.

I find that the tenant did reside in the unit during February and would therefore owe rent as of February 1, 2011. Given the above, I find that the landlord was entitled to receive the rent paid and there was no loss of access incurred by the tenant.

With respect to the tenant's argument that the home was unfit, I find that I find that section 32 of the Act states that a landlord must provide and maintain residential

property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

The tenant had alleged that the condition of the unit was deficient to the extent that the family was at risk if they chose to remain in the unit for another month, which would be necessary in order to comply with Act and give proper notice to terminate the tenancy. The allegation of an unsafe environment was disputed by the landlord. I accept that the tenant was ill, based on a note from the tenant's doctor stating that the tenant was being affected by her environment. However, I find that there was not sufficient evidentiary support to prove that the tenant's health problem or reaction to the environment was directly created by a violation of the Act or agreement on the part of the landlord. Therefore, I find that the test for damages has not been satisfied and there is not adequate support to grant the rent abatement being sought by the tenant.

I also find that the tenant's claim for additional compensation in the amount of \$3,000.00 was not supported by sufficient evidence, whether or not the tenant felt justified in vacating the rental unit for health reasons. Accordingly, I find that this portion of the tenant's application must also be dismissed.

Conclusion

Based on the above facts I find that the landlord has established a total monetary claim of \$1,150.00 comprised of \$1,100.00 rent owed and the \$50.00 cost of the application. I order that the landlord retain the tenant's security deposit of \$550.00 in partial satisfaction of the claim leaving \$600.00 still owed to the landlord.

I hereby grant the Landlord a monetary order in the amount of \$600.00. This order must be served on the tenant. The decision is final and binding and can be enforced through Small Claims court if necessary.

I hereby dismiss the tenant's claim in its entirety without leave.

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: July 04, 2011.

Residential Tenancy Branch