



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes For the landlords: MND, MNR, MNDC
For the tenant: MNSD, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The landlords applied for a monetary order for damage to the rental unit, for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), for unpaid rent or utilities, to keep all or part of the security deposit and to recover the cost of the filing fee from the tenant.

The tenant applied for a monetary order for the return of all or part of the security deposit and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. Due to the length of the hearing, the tenant's witnesses were not able to provide testimony at this hearing, but will be entitled to do so at the reconvened hearing.

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.

Preliminary Issue:

The landlord mentioned that she had only received the tenant's notice of hearing, application and evidence package on July 5, 2011, as she was on vacation at the time of delivery. The tenant responded that she had received the landlord's significant evidence package late and could not respond earlier. Additionally, the landlord did not respond to the courier's attempt at delivery at her home address. I note that the landlords' application was filed on March 24, 2011, but the evidence binder was not filed until June 28, 2011.

However, both parties accepted the submissions of the other and did not request an adjournment. Therefore the hearing proceeded with all submissions by both parties being accepted and considered timely submitted.

Issue(s) to be Decided

Has the tenant breached the Act or tenancy agreement, entitling the landlord to an Order for monetary relief?

Has the landlord breached the Act or tenancy agreement, entitling the tenant to an Order for a return of all or part of her security deposit?

Background and Evidence

The attending landlord is the property manager of the multi-unit residential building which contains the rental unit.

This one year, fixed term tenancy began on May 1, 2010, and ended on February 28, 2011, monthly rent was \$1,975.00 and the tenant paid a security deposit of \$987.50 and a pet damage deposit of \$200.00 on April 16, 2010.

Landlord's Claim and Evidence:

The landlord submitted a significant amount of evidence. Although not all referenced, the landlord's relevant evidence included the tenancy agreement with an attachment which appears to be an addendum to the tenancy agreement, entitled "Rules of the Manor," signed along with the tenancy agreement and containing terms and conditions of the tenancy, email transmissions between the landlord and the tenant during the time period of January 30-31, 2011 and February 7, 2011, a written notice to vacate signed by the tenant, ending the tenancy on February 28, 2011, an online posting of the rental unit, the landlord's timesheets submitted to the owner of the residential unit, photos of the rental unit after the tenant moved out, emails from the tenant regarding dates of move out, a document signed by the owner allowing the tenant to paint the bedroom of the rental unit, an enhanced copy of a partial page 3 of a 4 page document purported by the landlord to be a condition inspection report, notice of default to the tenant, more email transmissions between the tenant and the landlord concerning the differing opinions of the liquidated damages clause of the tenancy agreement, emails between the parties regarding a move out inspection, a lock company's invoice, and paint receipts.

The landlord's monetary claim is in the amount of \$3,402.47, which includes the March 2011 rent in the amount of \$1,975.00, \$275.50 for showing the suite over and above the \$500.00 deducted for liquidated damages, painting material for \$146.69, labour for cleaning for \$700.00, flowers for an open house for \$13.39, registered mail expense for \$10.39, and time involved for preparing the filing the application for \$282.00.

The landlord is not claiming for liquidated damages of \$500.00 or cost of the door repair, as these amounts have been deducted from the tenant's security deposit before returning the balance. The pet damage deposit is not an issue as it has been returned to the tenant.

In support of her application, the landlord's relevant testimony included the following:

Although the landlord was successful in re-renting the rental unit for the month of April 2011, the tenant broke the one year fixed term lease two months early, causing the landlord to lose rent for the month of March 2011. There were discussions with the tenant about her terminating her lease early, but the tenant was made aware that the landlord was entitled to and would pursue lost rent as well as the liquidated damages of \$500.00, as provided for in the tenancy agreement. The landlord cited her emails to the tenant, including one dated January 31, and March 1, 2011.

The landlord made diligent efforts to re-rent the rental unit for March, but was unsuccessful in so doing until April 2011. The landlord cited her time sheets as proof of the time spent showing the rental unit.

As to damages, the tenant's movers broke off the door handle and that the tenant agreed to pay for the damages, as indicated on the move out inspection report. Further, the tenant did not restore the rental unit to the former colour of the bedroom and kitchen/dining room or clean the rental unit, which caused the landlord to incur expenses in cleaning and painting.

Upon my query as to why the landlord had submitted just a partial page 3 of a 4 page document into evidence and not the complete move-in or move-out condition inspection report, the landlord responded by saying that the supplied page was all that was necessary as it showed the tenant's agreement to the deduction of the liquidated damages and the door repair.

Upon further query, the landlord stated that the tenant's obligation was to leave a rental unit in move-in condition for the next tenant, but that the landlord wanted the rental unit left in "show" condition.

The landlord is entitled to an extra \$275.50 over and above the liquidated damages of \$500.00 retained from the tenant's security deposit by the landlord to cover the costs in re-renting the rental unit, as it appeared the tenant would not cooperate in settling the dispute prior to a dispute resolution hearing.

Tenant's Claim and Evidence:

The tenant's relevant evidence included a written outline of the case and witness list, an email from the tenant's current landlord citing a good reference from the landlord, an email from landlord to the tenant, dated February 9, 2011, other emails between the parties, referencing the tenant's authorization for the landlord to withhold \$500.00 from the security deposit for liquidated damages, a character reference letter, a letter from the moving company denying the door handle was broken in the move, multiple emails from the tenant to the landlord requesting a complete copy of the inspection report, other post tenancy emails between the parties, and photos of the rental unit, after move out.

The tenant's monetary claim is in the amount of \$1,975.00, which is double the amount of her security deposit.

In support of her application, the tenant's relevant testimony included the following:

The tenant had been in discussions with the landlord about breaking the lease early, due to the noise from an upstairs tenant. The landlord addressed the issue of the tenant's quiet enjoyment, but was not successful on a permanent basis as the noise above continued after a short improvement. The tenant cited her need for uninterrupted sleep due to her schedule and demands of being in school.

The tenant was led to believe by the landlord that she could break her lease early, in exchange for paying the \$500.00 in liquidated damages. The tenant cites the "Rules of the Manor," which in part state that "Should the Landlord agree that you may break your Lease, liquidated damages will be charged in the amount of \$500.00."

The landlord agreed that the tenant could break her lease early due to noise and in support of this statement, the tenant pointed to the landlord's email evidence dated

January 31, 2011, which in part, the landlord stated “actually if you are going to break your lease, you could do it any time...” Additionally, the tenant pointed to the February 9, 2011, email from the landlord, which in part, stated that “I will tell folks your [sic] moving because you need a 3 bedroom place. “I hate to do that but in this case.... the white lie will be to your advantage.”

At the final inspection, the tenant agreed that the landlord could deduct the \$500.00 from her security deposit. However, after signing the document to that effect and in her absence, the landlord added the costs of the door repair to the document for a further deduction, to which the tenant never agreed. The tenant never realized the landlord intended to deduct the door repair until after receiving the reduced amount in the return of her security deposit. The tenant never received a receipt for the door repair.

The tenant denied that she or her movers broke the door handle, as the movers used the west exterior door and it was the east exterior door which was broken.

The landlord has not supplied a copy of the condition inspection report to the tenant, despite numerous requests, and has only seen the partial page 3 of a 4 page after receiving the landlord's evidence. The tenant had the page analyzed and said that it was clear the words “door repair” were added at a later time as it was not consistent with the words “liquidated damages,” indicating that she did not agree to the deduction.

The tenant cleaned the rental unit on the move out day, but finished in late evening when there was not much natural light. The tenant received a phone call shortly thereafter, at which time the landlord screamed at her that the rental unit had not been properly cleaned. The tenant went over the next day and cleaned the items the landlord mentioned. The landlord's photos were taken after the move out, but prior to the additional cleaning the next day.

The tenant restored the bedroom and kitchen/dining rooms to the original colour and left the rental unit in better shape than when she moved in, but the landlord informed her that the entire rental unit would be repainted anyway due to the age. The landlord is attempting to hold her responsible for painting the entire rental unit. The tenant cited the email from the landlord, dated February 27, 2011, which, in part, stated “I have spent 16 hours on painting so far and still haven't touched the living room and dining room....”

Interim Conclusion

Due to the length of the testimony, the hearing could not be completed.

Prior to concluding the landlord had fully testified in support of her application and the tenant had fully testified in response to the landlord's application and in support of her application. However, the tenant's witnesses did not have an opportunity to testify and the landlord did not have an opportunity to respond to the tenant's application.

The hearing has been adjourned and scheduled to reconvene in accordance with section 64 of the *Residential Tenancy Act*, for the purpose of hearing from the tenant's witnesses and allowing the landlord to respond to the tenant's application.

Additional documentary evidence will not be accepted from the parties. Consideration will be given to the documentary evidence timely received prior to the hearing and as listed above.

Conclusion

This hearing is adjourned to the date specified in the enclosed Notice of Adjourned Hearing, after which a final Decision will be rendered as to both applications.

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 11, 2011.

Residential Tenancy Branch