

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for damage to the unit, site or property, for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee. The Tenant has also made an application for a monetary order for the cost of emergency repairs, the return of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing, the Landlord stated that she did not receive a complete evidence package from the Tenant. Both evidence packages filed by the Tenant were late. The Tenant states that the Landlord was served with the package by registered mail, but has not provided any proof of service. The Tenant has also stated that he received one complete and one incomplete evidence package from the Landlord. I find based upon the testimony of each party that an adjournment is not required. I find that neither party is biased and that the hearing can proceed.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on November 1, 2008 on a month to month basis as shown in the submitted copy of the signed tenancy agreement. A security deposit of \$350.00 was paid and is being held in trust by the Landlord.

Both parties agree that the Tenancy ended subject to a mutually agreed settlement to end the Tenancy on May 10, 2011 at 2:00 p.m. as per Residential Tenancy File No. 769561.

The Tenant states that the forwarding address in writing was given to the Landlord on May 11, 2011 when they gave possession of the unit to the Landlord by returning the keys. The Landlord disputes this stating that the Tenants left the keys to the unit on May 17, 2011 at the office, but has never given the Landlord their forwarding address. The Tenant claims that the Landlord changed the locks to the rental unit preventing them from completing their move-out. The Landlord states that if the Tenant returned the keys on May 11, 2011 then this is contrary to the Tenant's claims of not being able to access the rental unit to complete their move-out. The Tenant relies on a receipt dated May 9, 2011 from Ray Rei Moving that notes, "could not get in app." The Landlord disputes this stating this is two days before the Tenant's claim that the keys were returned. The Landlord claims that the invoices submitted are fraudulent, but is unable to provide supporting evidence as the Tenant's evidence was submitted too late for her to provide any documentary evidence. The Landlord states that invoices are contrary to copies that she received from the moving company just prior to the hearing date.

The Tenant is seeking the cost of repairs requested by the Tenant but not undertaken by the Landlord of \$272.28. The Landlord disputes this. The Tenant has not provided any evidence of an agreement by the Landlord to reimburse the Tenant for these costs.

The Tenant is also seeking to recover costs of \$414.40 for a second moving trip because the Tenant states that the Landlord changed the locks preventing them from completing their move-out. The Landlord disputes this. The Tenant's invoices show that the first move-out occurred on May 9, 2011 and the second invoices shows a date for the moving on May 15, 2011. The Tenant states that the police were called, but is unable to provide any evidence to support their claim that the locks were changed by the Landlord. The Landlord disputes this stating that the locks were not changed.

The Tenant is also seeking the cost of lost wages as a result of the second moving day that the Tenant states was caused by the Landlord. The Tenant has provided calculations for both tenants totalling, \$194.80 (\$10.76 per hour for A.M. at 8 hours and \$13.50 per hour for R.M. at 8 hours). The Tenant has not provided any evidence of lost wages.

The Tenant is seeking to recover \$150.00 for late fees charged by the Landlord over 6 monthly rent payments that they state no such charge or fee exists on the tenancy agreement. The Tenant refers to payments made and has supplied receipts for late rent payments that date from March 2009 until January 2010. The Landlord has submitted a copy of the signed tenancy agreement which in clause 7 refers to late payments which are subject to a minimum charge of \$20.00.

The Landlord's claim consists \$60.00 for garbage removal(based upon an internal invoice from the Landlord), \$50.00 for repair of a closet door and oven door(based upon an internal invoice from the Landlord), purchase of a replacement bi-fold entry closet door for \$58.45(based upon an internal invoice from the Landlord and a receipt from Rona), general cleaning of the apartment for \$160.00(based upon a hand written note by a Sandra Rule), carpet cleaning cost of \$128.80 (the Landlord relies on a receipt from Hatt's Services) and rent arrears for May 2011 of \$700.00. The Landlord relies on an incomplete condition inspection report for the move-out and photographic evidence. The Landlord has not provided any evidence for rent arrears of \$700.00 for May 2011.

Analysis

As both parties have attended the hearing and have made detailed reference to evidence filed that I am satisfied that each has been properly served with the notice of hearing and evidence packages.

Based upon the incomplete evidence provided by the Landlord and the inconsistent testimony submitted by the Tenant, neither party has proven when the Tenancy ended or that the end of tenancy was delayed by the actions of the other. I find on a balance of probabilities that the Tenant has failed. The Tenant has failed to provide proof of a forwarding address in writing being provided to the Landlord. The Tenant has failed to establish a claim for the costs being sought for repairs to the unit. The Tenant has not provided any supporting evidence of an agreement for the Landlord to reimburse the Tenant for repairs. This portion of the Tenant's claim is dismissed. The Landlord's claim for rent arrears has failed and is dismissed.

The Tenant having failed to provide evidence that the locks were changed on the rental unit, thus preventing them from completing their move-out have failed to establish their claim for moving costs of \$414.40 and lost wages of \$194.80.

The Tenant's claims for N.S.F. charges have been disputed and have been proven justified by the Landlord's evidence in clause 7 of the signed tenancy agreement. This portion of the Tenant's claim is dismissed.

The Landlord relies on an incomplete condition inspection report for the move-out and photographic evidence. The limited views of the photographs provide some insight as to a lack of cleaning in the refrigerator, a damaged bi-fold door, the displaced glass for the oven door and the removal of garbage and recyclables. On a balance of

probabilities, I find that the Landlord has established a limited claim for damages being sought of \$60.00 for garbage removal, \$50.00 for repair of a closet and oven door, \$58.45 for a new bi-fold closet door, cleaning costs of \$160.00 and carpet cleaning costs of \$128.80 totalling, \$457.25. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$350.00 security deposit and the \$0.88 in interest which has accrued to the date of this judgement in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$156.37. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant's application is dismissed.
The Landlord is granted a monetary order for \$156.37.
The Landlord may retain the security deposit.

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: September 28, 2011.

Residential Tenancy Branch