



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent resulting from short notice to end the tenancy; for compensation for damage or loss and damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 52, 67, 72, and 90 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is to a monetary order for double the amount of the security deposit; for compensation for damage or loss; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, 72, and 90 of the *Act*.

Background and Evidence

The tenancy began on December 1, 2009 as a six month fixed term tenancy that converted to a month to month tenancy for a monthly rent of \$1,500.00 due on the 1st of each month with a combined security deposit and pet damage deposit of \$1,000.00 paid.

The parties agree the tenant provided verbal notice to end tenancy on or about February 27, 2011. The tenant testified that she placed her notice to the landlord in the mail slot at the landlord's address for service on February 28, 2011. The notice read:

"I, [tenant's name] hereby give my notice this 28th day of february." and is signed by the tenant. The landlord testified that she found the note on March 2, 2011.

The landlord testified that the tenant did not have the rental unit completely emptied on April 2, 2011. The tenant testified that the unit was vacated by April 1, 2011. An initial move out condition inspection was completed on April 3, 2011, but did not include issues related to the carpet as the landlord testified the parties agreed that the landlord would clean the carpets; the tenants would pay for it; and if there was damage that could not be resolved by cleaning they would complete a final move out inspection after the carpet cleaning.

The carpets were professionally cleaned on April 6 and the tenant did not dispute owing the landlord for the carpet cleaning. The parties agreed they never met again to complete the final inspection. The Condition Inspection Report was completed by the landlord but not signed by the tenant.

The tenant did not dispute the condition of the rental unit as per the Condition Inspection Report with the exception of holes in walls for hanging pictures and the cleaning. The tenant stated that they were allowed to hang pictures and they had cleaned the unit before the end of the tenancy.

The tenant testified that she provided a forwarding address to the landlord in a letter dated April 18, 2011 and that she received a letter from the landlord on May 3, 2011 at that address explaining why she would not give the security deposit back. The tenant testified that she never received any monies back from the landlord for the security deposit and seeks to be compensated for double the amount of the full security deposit as the landlord failed to provide it within 15 days of the end of the tenancy and receipt of the forwarding address.

The landlord testified that she took the documents over to the tenant shortly after she received the tenant's forwarding address and found there were several apartments in the building but that because the tenant had not provided a specific apartment number she did not know where to leave the documents. The landlord states that she text-messaged the tenant and told her to pick up the documents at the dispute address.

The tenant testified the address she provided was for a complex that had one mailbox for all the units in the complex and as such there was no need to provide additional information to the landlord.

The landlord further testified that she never did receive the tenant's complete forwarding address until the tenant served her with the Notice of Hearing documents for this hearing. She also states that because she lives in another city and the service address is the unit above the rental unit she did not receive the address until she returned to the dispute address on July 25, 2011. The tenant testified that she served the Notice of Hearing documents via courier during the postal strike on June 17, 2011.

The landlord seeks compensation as outlined in the following table:

Description	Amount
Carpet Cleaning - receipt	\$528.64
1 Month Rent – short notice to end	\$1,500.00
Lost rent (1 week) –if not entitled to 1 month rent for short notice	\$383.33
2 days additional rent –if not entitled to 1 month rent for short notice	\$110.00
Light bulb replacement - receipt	\$50.00
Lock Replacement/Key cutting – receipt for cutting only	\$50.00
Cleaning - receipt	\$200.00
Cleaning – no receipt	\$224.00
Exterior Front Door Light replacement – no receipt	\$50.00
Outstanding charges for cable – no cable company receipt	\$36.39
Repairs to master bedroom walls – no receipts	\$218.40
Repair curtain rod – no receipts	\$19.60
Painting front door – no receipts	\$49.20
Repair and paint wall in bedroom 4 – no receipts	\$89.60

The tenant testified that during the tenancy the landlord had been charging them for using a coin operated laundry system but that the tenant also paid for hydro charges and in essence they were charge twice for using the dryer. The tenant seeks \$440.00 as compensation for the duration of the tenancy. The tenant provided no documentary evidence of how she determined this amount.

The landlord testified that in January 2011, one of the other occupants in the rental unit raised this issued with her and she agreed to stop charging through the coin operated dryer system. She further stated that the tenancy agreement never did include laundry and she never promised to reimburse the tenants for past usage.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 45 of the *Act* allows a tenant to end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

The notice must comply with Section 52. Section 52 states that in order to be effective the notice must be in writing and it must be signed and dated by the tenant; give the address of the rental unit; and state the effective date of the notice. As the copy of the notice submitted into evidence does not give the address of the rental unit or state the effective day, I find the notice does not comply with Section 52.

Further, Section 90 of the *Act* stipulates that a document that is given or served on another party by leaving it in a mail box or mail slot is deemed to be received by the other party on the 3rd day after it is left. Based on the testimony of both parties I accept that the landlord *received* the written notice on or after March 1, 2011.

I therefore find the earliest dated the tenancy could end was April 30, 2011 and the tenant's are responsible for the payment of rent for the month of April, 2011. However as the landlord has testified that she had a new tenant move in after the first week of April, I find the amount owed by the tenant is reduced by \$350.00 or the equivalent of one week's rent according to the tenancy agreement.

Section 37 of the *Act* requires a tenant when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I accept, based on the documentary and photographic evidence from the landlord, that the rental unit required repairs and carpet cleaning and cleaning. As such, I find the tenant failed to comply with Section 37.

Therefore I find the landlord has suffered a loss resulting from the tenant breaching Section 37 of the *Act*. However, with the exception of the carpet cleaning; light bulb replacement and one amount for cleaning, I find the landlord has failed to provide sufficient evidence to establish the value of the majority of cleaning and repair costs.

As such, I find the landlord is entitled to the cost of carpet cleaning; light bulb replacement and the cleaning claim of \$200.00. In relation to the landlord's claim for

costs to cut keys and replace locks, the landlord testified that the tenant did not return all keys and so she had to change the lock.

As the landlord did not indicate that failure to return all keys restricted her access to the rental unit, I find the landlord did not suffer a loss or damage but rather the landlord chose to change the lock and cut additional keys. I therefore dismiss her claim for lock replacement and key cutting.

As to the landlord's claim for additional cable charges, the landlord failed to provide any receipts from a cable service provider to establish the value of any charges attributed to the tenant and I dismiss this portion of the landlord's Application.

As to the tenant's claim for reimbursement for dryer usage, I find the tenant has failed to establish that she suffered a loss as I accept that laundry was not included in the original tenancy agreement. Further, I find the landlord did not violate the *Act*, regulation or tenancy agreement in this matter and the tenant failed to provide sufficient evidence to establish the value of the claim. As such, I dismiss this portion of the tenant's Application.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of a forwarding address provided by the tenant, either return the security deposit or file an Application for Dispute Resolution to claim against it. Section 38(6) states that if the landlord fails to comply with Section 38(1) the landlord must pay the tenant double.

As to the landlord's testimony that the tenant had provided her an incomplete address, the *Act* does not stipulate that a forwarding address be a "complete" address, however I find the landlord had taken some action that caused her concern as to the address and I accept that based on that she acted in good faith.

I find based on the landlord's testimony that the service address provided was in the city the rental unit was in and based on the tenant's testimony that she served the hearing documents on June 20, 2011 the landlord cannot rely on the fact that she lives in another community to circumvent the provisions in Section 90 as noted above that stipulates that documents served by placing them in a mail slot or conspicuous place are deemed received on the 3rd day after placement.

As such, I find the landlord was served with the tenant's correct and complete address on or before June 23, 2011 and the landlord had until July 8, 2011 to comply with Section 38(1) and based on the testimony and evidence I find the landlord failed to meet

this obligation. I therefore find the tenant is entitled to double the amount of the security deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$71.36** comprised of \$2,000.00 double the security deposit less \$1,150.00 rent owed to the landlord; \$538.64 carpet cleaning; \$200.00 cleaning; and \$50.00 replacement light bulbs.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were at least partially successful in their Applications, I dismiss both their requests for recovery of the filing fee.

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 21, 2011.

Residential Tenancy Branch