



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting a monetary Order for damage to the rental unit, unpaid rent, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting return of double the deposit paid and filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for damage to the rental unit and unpaid rent in the sum of \$1,991.60?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the tenant entitled to return of double the deposit paid?

Is the landlord entitled to filing fee costs?

Preliminary Matters

The landlord stated that 4 photographs were submitted as evidence; these photos were not before me. The landlord stated the photographs were sent to the tenant via regular

mail; the tenant testified that he did not receive the photos. Therefore, the hearing proceeded without the photographs, as service to the tenant as not proven.

Background and Evidence

The tenancy commenced on January 1, 2011; \$900.00 rent was due on the first day of each month. A deposit in the sum of \$450.00 was paid at the start of the tenancy.

Condition inspection reports were not completed.

The tenant vacated the unit on January 26, 2011. The tenant stated the landlord was aware he was vacating.

The tenant testified that on February 20, 2011, he personally served the landlord with his written forwarding address. The landlord stated they did not receive the written forwarding address until they were served with the tenant's application for dispute resolution on July 20, 2011.

On August 11, 2011, the landlord applied, using the tenant's service address, claiming against the deposit. The landlord stated he was told by a Residential Tenancy Branch staff member that he was only required to apply within a reasonable period of time, in order to have his application scheduled to be heard with the tenant's application.

The landlord has claimed loss of February, 2011, rent revenue, as the tenant failed to provide written notice ending his tenancy. The landlord located a new occupant on February 24, 2011, effective March 1, 2011.

The landlord submitted an estimate for work, dated March 30, 2011. The estimate included costs in the sum of \$1,041.60 for door repairs, carpet replacement, labour and taxes. The tenant stated he did not cause any damage to the rental unit. The landlord stated the door jambs were all loose and that the tenant caused a burn mark in the 1.5 year old carpet.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The landlord applied claiming against the deposit on August 11, 2011; 23 days after receipt of the tenant's application, which included the tenant's address. The landlord was required to submit an application within 15 days of July 20, 2011. In the absence of

a claim within 15 days, section 38(6) of the Act requires a landlord to pay the tenant double the deposit; \$900.00. The landlord may have believed that he was not required to observe the 15 day requirement; however, I find that the Act is unequivocal.

Further, the landlord did not complete inspection reports as required by the Act. Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the Act extinguishes the right of the landlord to claim against the deposit for damage should the landlord have failed to offer the opportunities for inspection. There was no proper inspection at the start of the tenancy or at the end; which extinguished the landlord's right to claim against the deposit.

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

In the absence of any evidence of damage to the rental unit and, as a result of the disputed testimony, I find, on the balance of probabilities; that the landlord has failed to prove his claim requesting compensation for damage; therefore, the claim for damage is dismissed. I find that an estimate for work to be completed, dated 2 months after the tenant vacated the rental unit is insufficient proof of damage caused by the tenant.

Section 52(a) of the Act provides:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*
(a) be signed and dated by the landlord or tenant giving the notice

As the tenant failed to give the landlord written Notice ending the tenancy, I find that the landlord is entitled to loss of February, 2011, rent revenue in the sum of \$900.00.

As each application has merit, I decline filing fees to either party.

As the tenant owes the landlord \$900.00 and the landlord owes the tenant \$900.00, I find that the landlord will retain the deposit in the sum of \$450.00 plus the doubled portion of the deposit, \$450.00. A monetary order is not required, as the amount owed by each party is equal.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$900.00, which is comprised of loss of February, 2011, rent revenue.

I find that the tenant is entitled to double the deposit in the sum of \$900.00.

The landlord will retain the deposit in the sum of \$450.00 and the balance that he owes to the tenant, in satisfaction of the claim for rent. The monetary amounts are then set off against each other.

The landlord's claim for damage to the rental unit is dismissed.

Neither party is entitled to filing fee costs.

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: October 25, 2011.

Residential Tenancy Branch