



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF
 MNSD FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for damage to the unit, site or property, for unpaid rent, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for their application.

The Tenant filed seeking a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. What caused this tenancy to end?
2. Is the Tenant entitled to compensation pursuant to section 51 of the *Residential Tenancy Act*?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation and or tenancy agreement?
4. If so, has the Tenant met the burden of proof to obtain a monetary order as a result of that breach, pursuant to section 67 of the Act?
5. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
6. If so, has the Landlord met the burden of proof to obtain a monetary order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

At the outset of the hearing the Landlord affirmed that he did not serve the Tenant with copies of his evidence and that he only provided the evidence to the *Residential Tenancy Branch*. The Landlord was advised that I could not consider his documentary evidence but that I would consider his testimony.

The parties agreed that they entered into a fixed term tenancy agreement that began on May 1, 2010 and was set to switch to a month to month tenancy or another fixed term after April 30, 2011. Rent was payable on the first of each month in the amount of \$1,800.00 and on April 10, 2010 the Tenant paid \$900.00 as the security deposit. Despite a move in and move out walk through inspection no condition inspection report forms were completed or signed. The tenancy ended as a result of the Landlord issuing the Tenant a written letter to end the tenancy because the owners wished to have vacant possession so they could sell the rental unit which the parties agreed to end the tenancy at the end of June 2011.

The Tenant affirmed that she did not pay rent for June 2011 as compensation for being issued the letter to end her tenancy as it was her intention to stay in the rental unit for at least two years. She vacated the property by June 25, 2011 and had her employees clean the rental unit and attend the move out walk through near the beginning of July 2011. It was during that walk through that the Landlord stated he was not happy with the cleaning so her employees re-cleaned the unit.

The parties agreed that the Tenant's forwarding address was provided to the Landlord during the first move out walk through near the beginning of July 2011. The Landlord issued a \$400.00 cheque July 15, 2011, as partial refund of the security deposit, which the Tenant received and has not cashed.

The Landlord is seeking compensation as follows:

- \$1,800.00 for June 2011 rent as he does not agree that the Tenant is entitled to compensation for the owners ending the tenancy; and
- \$400.00 for damages which is comprised of \$200.00 for a stain in the master bedroom carpet, \$100.00 for a scratch in the hardwood floor, \$100.00 for additional cleaning performed by the Landlord to the living room and the appliances. The Landlord confirmed he did not have evidence to prove the condition of the rental unit at the beginning of the tenancy and argued that the rental unit was a two year old condo where the owners resided for ten months

- before renting it out. He is relying on the Tenant's conscience to admit that this damage was caused. He confirmed the carpet and floor have not been repaired and the amounts claimed are based on his estimates of the cost of the damage.
- \$100.00 for a strata fine which he provided proof of a warning letter. He confirmed there was no proof provided that the fine was paid and he could not confirm the exact date that payment was made.

The Tenant does not agree with any of the amounts being claimed by the Landlord. She advised the scratch in the hardwood existed at the beginning of the tenancy and was created when the owner's moved out; she spoke with the professional carpet cleaners and was told the stain was primarily removed and has not seen evidence of the contrary, her employees are professional cleaners and they completed additional cleaning to satisfy the Landlord therefore there should not have been additional work to be done. She acknowledges receiving a copy of a warning letter but has never been issued an invoice from the Strata or seen a copy of an invoice issued to the Landlord or owners. She is seeking the return of double her security deposit.

Analysis

The Landlord confirmed that they did not provide the Tenant with copies of his evidence which is a contravention of sections 3.1 and 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's Application

The Landlord is seeking \$500.00 for damages and strata fees and relied on his verbal testimony and the "Tenant's conscience" as proof of his claim. The Tenant disputed all of the items claimed by the Landlord.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove damages occurred during the course of the tenancy. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet his burden of proof. Accordingly I dismiss the Landlord's claim of \$500.00.

The parties agreed the tenancy ended as a result of a letter issued to the Tenant informing her that the Landlords wished to have vacant possession of the rental unit to sell the property. Although the Act does not provide for this specific reason to end a tenancy, I accept that the Tenant understood this reason was being issued pursuant to section 49 of the Act and therefore she was entitled to compensation equal to one month's rent pursuant to section 51 of the Act. Accordingly I find the Tenant exercised her right to withhold her last month's rent pursuant to section 51(1.1) and that this amount is deemed to have been paid to the landlord. Therefore I dismiss the Landlord's claim for June 2011 rent.

The Landlord has not been successful with his application; therefore he bears the burden of the cost of his application.

Tenant's Application

The evidence supports the tenancy ended June 30, 2011 and the Landlord was provided the Tenant's address on or before July 3, 2011. The Landlord sent the Tenant a partial security deposit refund of \$400.00 on July 15, 2011 which has not been cashed. The Landlord filed his application for dispute resolution on November 14, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 18, 2011. The Landlord did not return the full amount and did not file his application until November 14, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Accordingly, I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit plus interest in the amount of **\$1,800.00** (2 x \$900.00 + \$0.00 interest).

I find that the Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$1,850.00** (\$1,800.00 + \$50.00). This Order is legally binding and must be served upon the Landlord.

The partial refund of \$400.00 was dated July 15, 2011 and is possibly stale dated. Therefore the monetary award will be issued in the full amount of \$1,850.00. In the event that the \$400.00 cheque is still honoured the Tenant will be required to reduce the amount being collected from the Landlord to ensure the total amount received does not exceed the \$1,850.00 award.

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: November 29, 2011.

Residential Tenancy Branch