

DECISION

Dispute Codes MND, MNR MNSD, FF, MNDC

Introduction

There are applications filed by both parties. The Landlord is seeking a monetary order for damage to the unit, 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 pet damage and security deposits and recovery of the filing fee. The Tenant is seeking a monetary order for the return of the pet damage and security deposits, for compensation for damage or loss under the Act, regulation or tenancy agreement consisting of the return of double the pet damage and security deposit and loss of quiet enjoyment and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. Both parties acknowledged receiving the other party's evidence packages.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the pet damage and security deposits?

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties attended the hearing and agreed that they were aware of the details of the others application for dispute and was in receipt of the evidence packages submitted.

Both parties agreed at the hearing that this Tenancy began on May 15, 2010 on a fixed term tenancy for 1 year to end on May 31, 2011 and then thereafter on a month to month basis as shown in the submitted copy of the signed tenancy agreement. The monthly rent at the end of the tenancy was \$1,375.00 payable on the 1st of each month. A pet damage deposit of \$500.00 and security deposit of \$600.00 was paid to the Landlord at the beginning of the Tenancy. The Landlord received verbal notice to vacate the rental on August 12, 2011 which was followed by an email notice on August 13, 2011. The notice given by the Tenant was to end the tenancy for September 15, 2011. The Landlord immediately began to advertise the rental unit to re-rent as shown in the evidence submitted by the Landlord. The Landlord received the forwarding

address in writing on September 18, 2011 when the condition inspection report for the move-out was completed by both parties.

The Landlord is seeking to claim \$687.50 for the ½ month remaining for the month of September as unpaid rent (loss of rent) as the Tenancy Agreement states that rent is due on the 1st of each month as the Tenant ended the Tenancy on September 15, 2011. The Landlord states that the Tenant failed to give proper notice of 1 month prior to the end of the tenancy before the date rent is due as per the Act. The Tenant disputes this stating that the Landlord accepted the notice to end tenancy for September 15, 2011.

The Landlord is seeking to claim \$20.43 for the replacement of a drain, \$30.00 for the pick up and installation of the part. The Tenant has conceded that the drain needed to be replaced. Both parties rely on the condition inspection report for the move-out that was signed on September 18, 2011. On the report which is signed by both parties, \$20.00 is accepted as the replacement cost of the drain. "No problems" was noted on this report for the inspection. The Landlord has submitted a receipt for the drain part from Rona for \$18.99 plus HST totalling, \$21.26. The Landlord states that the \$30.00 being claimed is for her husband's time of 1 ½ hours to pick up and install the part. The Tenant, J.J.C., states that the part could easily be installed within 10 minutes and that no special tools are required.

The Landlord is seeking \$100.00 for the cost of cleaning to the rental unit and relies on photographs submitted that were taken after the condition inspection report. The Tenant disputes this stating that the condition inspection report for the move-out clearly states, "no problems" and that the Landlord's claim should not be allowed. The Tenant has submitted their own photographic evidence which contradicts the Landlord's photographs.

The Tenant has also made claim for the return of double the pet damage deposit \$500.00 and the \$600.00 security deposit. The Tenant states that the Landlord has failed to return the pet damage and security deposit to the Tenant.

The Tenant is also seeking \$687.50 equal to ½ of the monthly rent as compensation for loss of quiet enjoyment. The Tenant states that over the course of the Tenancy the Landlord breached the Act by attending 15 times without notice at the rental unit and entered without permission. The Tenant states that on one occasion on September 4, 2011 the Landlord attended unannounced and rang the door bell at the rental unit, on August 13, 2011 appeared at the rental unit door and spoke to her son who allowed her entry into the unit, on August 20, 2011 the Landlord was found looking into their window from outside and was invited into the unit by the Tenant and on August 8, 2011 the

Landlord attended the rental unit for an inspection for insurance purposes which took between 30-40 minutes. The Tenant's state that they were spoken to in a demeaning manner by the Landlord and the state of the rental unit was in a poor condition. The Tenants state that the Landlord was informed verbally that these attendances without proper notice were unwelcome. The Landlord states that she considered the Tenants as friends and that the two parties had informal and relaxed conversations without fear of hurting the others feelings. The Landlord disputes having any notice of the Tenant's claims or that the Landlord entered the rental unit without permission. The Landlord refers to the email and facebook correspondence between the two parties during the Tenancy that the Tenant's were happy living at the rental until the Tenants gave notice to end the tenancy.

Analysis

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

Section 45 of the Residential Tenancy Act states,

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based upon the direct testimony of both parties and the submitted copy of the signed tenancy agreement, I find that the Tenant's failed to give proper notice to vacate the rental unit. I find that the Landlord has established her claim for compensation for the remaining ½ months rent for September of \$687.50.

I find that as both parties have conceded the cost of the drain that the Landlord has established a claim for the replacement of the drain for \$21.26, consisting of the original part cost of \$18.99 plus the 12% HST based upon he receipt submitted. I also find that the Landlord has failed to establish a claim for the \$30.00 installation cost. The Landlord did not incur any losses for the installation. I am satisfied based upon the

direct testimony of the Tenant that no special requirements or skills are required in the installation process. The Landlord's claim for \$30.00 in installation costs is dismissed.

I find that the photographic evidence submitted by both parties are contrary to each other and provide no basis to compare them. The onus or burden of proof falls to the applicant. In this case, the Landlord's claim is not established. I refer to the undisputed condition inspection report for the move-out which was submitted by both parties. On this basis, I find that the Landlord's claim for cleaning is dismissed.

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Tenancy ended on September 15, 2011 and the forwarding address was received by the Landlord on September 18, 2011. The Landlord applied for dispute on September 22, 2011. I find that the Landlord complied with Section 38 (1) by applying for dispute resolution within the allowed time frame. The Tenant has failed to establish a claim for the return of double the pet damage and security deposit. This portion of the Tenant's application is dismissed.

The loss of quiet enjoyment include, but are not limited to reasonable privacy, freedom from unreasonable disturbance and interference. The Tenant must show that there has

been substantial interference with the ordinary and lawful enjoyment of the premises by the Landlord's actions that renders the premises unfit for occupancy for the purposes for which they were leased. I find on a balance of probabilities that the Tenants have failed to provide evidence for the basis for a breach of the covenant of quiet enjoyment beyond what would be considered temporary discomfort or inconvenience or that the Landlord was given notice to effectively deal with any issues for the tenancy. On this basis, I find that the Tenant's have not established a claim for loss of quiet enjoyment. This portion of the Tenant's application is dismissed.

The Tenant's application for a monetary order has not been established and is dismissed.

The Landlord has established a total claim of \$708.76 consisting of \$687.50 for ½ months rent and \$21.26 for the replacement of the drain. The Landlord is also entitled to recovery of the \$50.00 filing fee.

The Landlord holds a \$1,100.00 pet damage (\$500.00) and security deposit (\$600.00) in trust. I order that the Landlord is entitled to retain \$758.76 in satisfaction of the claim from these deposits. The remaining \$341.24 is to be returned to the Tenant. The Tenant is granted a monetary order for \$341.24.

Conclusion

The Tenant's application is dismissed.

The Landlord is granted an order to retain \$758.76 from the \$1,100.00 pet damage and security deposits.

The remaining \$314.24 is ordered returned to the Tenant and is issued a monetary order to reflect this.

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: December 09, 2011.

Residential Tenancy Branch