



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 hearing dealt with the landlord's Application for Dispute Resolution seeking to a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent 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; for damage to the rental unit; for damage or loss; 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence:

- A copy of a tenancy agreement signed by the parties on November 2, 2007 for a 1 year fixed term tenancy beginning on December 1, 2007 converting to a month to month tenancy on December 1, 2008 for a monthly rent of \$1,800.00 due on the 1st of each month with a security deposit of \$900.00 paid;
- A copy of a Notice of Rent Increase for a rent of \$1866.60 beginning on June 1, 2009;
- A copy of a Dispute Resolution Decision issued on October 26, 2009 granting the landlord an order of possession and an order to deduct \$322.00 in rent owed to the landlord to the security deposit and interest held of \$915.27 leaving a balance of a security deposit of \$593.27; and
- A copy of a Condition Inspection Report completed for the move in condition on December 1, 2007 and signed by both parties. The Report includes the condition at the end of the tenancy but is not signed by the tenant.

The landlord submits that she requested a move out condition inspection on either October 26 or 27, 2007 and that the tenant called on the morning of October 26, 2011 to say that she would be there on the 27th at 3:00 p.m. The landlord goes on to say the tenant called on October 27, 2007 and said she was sick, the landlord told her to come on the October 28, 2011 or to let the landlord know what was happening. The landlord

states she never heard from the tenant again so she posted a Notice of Final Opportunity to Schedule a Condition Inspection for October 31, 2011. The tenant did not attend.

The parties agreed the tenant never provided the landlord with her forwarding address at any time after the end of the tenancy.

The tenant stated that she could not remember details of dates around the end of the tenancy because it was 2 years ago and her boyfriend had just passed away. She cannot remember specifically the day that she moved out of the rental unit or the day it was cleaned by her family members who helped her or when garbage items in the yard were removed.

The landlord has several pictures that she states were taken on the day of the move out condition inspection. The tenant testified that these pictures must have been taken sometime after most of their belongings were removed but before she and her family cleaned.

The landlord testified that the condition of the rental unit was such that they filed an insurance claim through which insurance covered \$14,906.26 worth of repairs to cover off the costs of the most severe damage and \$2,733.20 for two months worth of lost revenue (\$3,733.20) less the deductibles totalling \$1,000.00. The landlord testified it took 4 months to prepare and rent out the unit to new tenants.

The landlord seeks the following compensation for items not covered through insurance:

Description	Amount
Insurance Deductible	\$1,000.00
Loss of revenue (Jan/Feb 2010)	\$3,733.20
Garbage Removal	\$280.00
Dump Fees	\$205.00
Painting Supplies	\$371.86
Miscellaneous Supplies	\$160.20
Photograph printing (evidence)	\$27.20
Painting Labour	\$1,500.00 - \$2,000.00
Cleaning Labour	\$500.00
Total	\$7,777.46 – \$8,277.46

The tenant testified that she and her mother had cleaned the rental unit for hours and that she told her mother not to work so hard because she knew the landlord was not going to give the security deposit back anyway.

On reviewing the photographs submitted by the landlord the tenant pointed out items in them had been later cleaned and/or removed but she could no specific time frames. The tenant agreed they may have left a TV and stand; some garbage bags in the

basement; maybe cigarette butts on the ground; the desk that was wedged into the corner of the room; a bent screen and broken door.

Analysis

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

I accept the landlord did not have the tenant's forwarding address and as such, was not required, under the *Act*, to return the balance of the security deposit at any time.

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 37 of the *Act* requires a tenant, when vacating the rental unit, to leave it reasonable clean and undamaged except for reasonable wear and tear.

I favour the Condition Inspection Report, the photographs and the landlord's testimony as a record of the condition of the rental unit at the end of the tenancy. Despite the tenant's claim that the photographs were taken prior to cleaning the property, I find that her testimony was vague, at best inconclusive, and not supported by any evidence or corroborating testimony from witnesses.

I accept the statement from the landlord that the tenant did not dispute that the tenant rarely resided in the rental unit but rather her children lived there while she stayed with her boyfriend. I find no reason, other than to avoid meeting with the landlord to discuss the condition of the unit, why the tenant could not have sent an agent to represent her for a move out condition inspection if she could not attend.

For these reasons, I find the tenant failed to meet her obligations under Section 37 and as a result the landlord has suffered a loss that results from a violation of the *Act*. I also find the landlord took reasonable steps to mitigate any losses by filing an insurance claim to cover the costs of any damages and losses.

However, with the exception of cleaning, and while the landlord testified that the insurance company did not cover repainting of walls that may not have been damaged or damaged as severely as other walls, she has provided no documentation from the insurance company as to what and was not covered.

As such, I find I cannot determine what costs outside of the insured costs the landlord may have been responsible for repairs and painting. I dismiss the portion of the landlord's Application seeking compensation for: painting supplies \$371.86; miscellaneous painting and repair supplies \$129.50; painting \$1,500.00 - \$2,000.00.

Similarly, in relation to the lost revenue for being unable to re-rent the unit to new tenants for 4 months, while I accept it took the landlord longer than anticipated to prepare the unit for rental, I find the landlord has failed to establish that she took all steps to mitigate this loss for the following reasons:

1. The landlord's insurance company compensated the landlord for lost revenue for the months of November and December 2009 on January 14, 2011;
2. The landlord has provided no documented explanation from the insurance company to say that they would not consider two additional months of lost revenue and if not why not;
3. The landlord has provided no evidence to specify when the unit was ready to be rented; when or how she advertised the availability of the rental; and
4. The landlord did submit evidence that a new tenancy agreement was signed by new tenants on February 2, 2010 for a tenancy to begin on March 1, 2010 thus ending any possibility to rent the unit for at least a portion of February 2010.

As a result, I dismiss the portion of the landlord's Application seeking compensation for lost revenue for the months of January and February 2010 in the amount of \$3,733.20.

Based on a letter from the landlord's insurer, I accept the landlord had to pay a deductible in the amount of \$1,000.00 that she would not have had to pay had the tenant fulfilled her obligations under Section 37.

In relation to the cleaning, I am satisfied the landlord's insurance did not cover any cleaning costs and I find the landlord has establish the value of the costs associated with cleaning as follows: garbage removal; dump fees; cleaning supplies; and labour.

As to the landlord's claim for the costs for the development of her photographic evidence for this hearing, I find the costs involved in preparing for dispute resolution, other than the filing fee are not contemplated in the *Act* and I dismiss this portion of the landlord's Application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,115.78** comprised of \$1,000.00 insurance deductible; \$280.00 garbage removal; \$205.00 dump fees; \$30.78 cleaning supplies; \$500.00 cleaning labour; and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$543.27 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,572.51**.

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

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: January 10, 2012.

Residential Tenancy Branch