



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Preliminary Issues

The Landlord has made application to keep all or part of the pet damage deposit or security deposit however the parties confirmed they attended dispute resolution proceedings on September 23, 2011 during which findings were made pertaining to the return of the Tenants' security deposit and pet deposit. Accordingly I find the request to retain the security and pet deposits constitutes res judicata.

Res judicata is a doctrine that prevents rehearing of claims and an issue arising from the same cause of action between the same parties after a final judgment was previously issued on the merits of the case.

Consequently, I find the Landlord is barred from raising in this hearing the matters pertaining to the return of the pet and security deposits that were contained in the Tenants' application that was heard September 23, 2011, and may only seek compensation for new matters raised in this application; i.e. for damages to the rental unit and/or lost revenue.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

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

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, Regulation or tenancy agreement?
2. 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

The following facts are not in dispute:

- The parties entered into a fixed term tenancy agreement that began on November 1, 2010 and was set to switch to a month to month tenancy as of November 1, 2011;
- Rent was payable on the first of each month in the amount of \$1,600.00;
- The parties attended a move in inspection November 10, 2010 at which time the condition inspection report was completed;
- The Tenants provided notice to end the tenancy as of May 31, 2011 and occupied the unit until June 1, 2011;
- The parties attended a move out inspection walk through on June 2, 2011 and no condition inspection report was completed during the walk through;
- The Landlord and Agent completed the move out condition report form after the June 2, 2011 walk through, without the Tenants being present, and mailed a copy of the move out condition form to the Tenants shortly afterwards.

The Landlord affirmed she began to advertise the unit within a few days after receiving the Tenants notice however she was not able to re-rent the unit until August 15, 2011. She collected \$800.00 for half of August 2011 rent. She is seeking to recover the lost 2 ½ months rental revenue for a total amount of \$4,000.00.

The Tenant confirmed they vacated the unit prior to the end of the fixed term tenancy because they could no longer afford the rent and felt it was better to move out than to always be late with the rent. She believes she should not have to pay for any rent after they vacated because they provided the Landlord with one months notice.

The Landlord advised that at the beginning of the tenancy she provided the Tenants with copies of the strata by-laws and rules and that she had a discussion with the Tenant informing them that she believed they would not have to pay the \$100.00 move in or the \$100.00 move out fees if they moved their possessions through the back door. The Landlord confirmed she was mistaken about the moving fees and is seeking to recover the \$200.00 which she has since had to pay to the strata.

The Tenant affirmed that they were told by the Landlord that they would not have to pay these fees if they moved in through the back door, which they did. Then shortly after they moved in the Landlord e-mailed them to collect the \$100.00 move in fee as she had been billed for it. They in turn provided proof that their movers came in through the back door to assist the Landlord in getting this fee reversed. The Tenant stated they

never spoke about this with the Landlord after providing her with the proof and never discussed the matter with the Landlord at the time of move out. She stated they should not have to pay the \$200.00 moving fees as they moved in and out through the back door as instructed by the Landlord.

The Landlord stated that the strata billed her the move in and move out fee at the same time as supported by the invoice provided in her evidence and therefore the Tenants should have known they would have to pay the \$100.00 move out fee. She confirmed she did not discuss the issue with the Tenants again as she "assumed" they would know they would be responsible to pay the move out fee.

The Landlord is seeking \$80.00 for cleaning the rental unit which is comprised of four hours at \$20.00 per hour. She pointed to her evidence which included the codes on the move out condition form which shows parts of the unit required cleaning and a few photographs that were taken after they walked through the unit with the Tenants.

The Agent affirmed he conducted the move out walk through with the Tenants and no conversations took place pertaining to the cleanliness or condition of the unit as they were attempting to be amicable during the walk through. Then he brought up that the Landlord would not be returning the deposits to cover lost revenue at which time the Tenants became upset and left.

The Tenant argued that they had left the rental unit very clean and that is why no discussion was brought up about the condition of the unit. She confirmed they became upset about the Agent telling them they would not be getting their security deposit back and that they left at that time. She confirmed the Landlord did not have the condition form with her during the walk through and that the Landlord and her Agent commented on how happy they were with how they had kept the unit nice and clean.

The Landlord advised that she resides in a different city and had to make several trips to the unit to show it to prospective tenants. She is seeking to recover \$210.00 for travel to and from her home to the rental unit.

Analysis

I have carefully considered the aforementioned and the relevant documentary evidence which included, among other things, copies of the move out inspection report, photographs, a copy of the tenancy agreement, copies of advertising listing the unit for rent beginning in early May, 2011, various e-mail communications between the parties, and a letter dated December 15, 2010 from the strata to the Landlord.

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.

Section 45 (2) of the Act provides that a tenant may end a fixed term 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, (b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy**, [emphasis added] and (c) 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.

The parties agreed this tenancy was for a fixed term that was not set to expire until October 31, 2011, and that the Tenants ended it as of May 31, 2011. I accept the Landlords testimony that they mitigated their loss by advertising the unit as soon as possible and that they were not able to re-rent the unit until August 15, 2011.

Based on the aforementioned I find the Tenants have breached section 45(2) of the Act which caused the Landlord to lose 2 ½ month's rent. Accordingly I find the Landlord has met the burden of proof, as listed above, and I award her loss of revenue in the amount of **\$4,000.00** (2.5 x \$1,600.00).

The parties agreed that prior to moving into the rental unit the Landlord had a discussion with the Tenants about moving in through the back door to escape being charged the \$100.00 move in fee. I accept that after the Landlord was invoiced the move in and move out fees in the amount of \$200.00 she attempted to collect the amount from the Tenants and when that failed she attempted to have the fees reversed. The evidence further supports that the Landlord never discussed these fees or attempted to collect these amounts from the Tenants again until making this application. In the absence of any further communication to the Tenants about these fees I find it unreasonable to assume they would know they would have to pay a move out fee if they moved out through the back door as they were previously instructed to move out this door to avoid the fees. Furthermore, I find there is insufficient evidence before me to

prove the strata refused the Landlord's request to reverse these fees once proof was received confirming the Tenant's possessions were moved in through the back door, and there is insufficient evidence to prove the Landlord has paid these fees. I also find that because the Landlord chose not to continue to deal with this issue after receiving the Tenants proof that the Landlord has not proven she took reasonable steps to mitigate her loss as required under Section 7 of the Act. Accordingly I dismiss the Landlord's claim for move in and move out fees of \$200.00.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The parties agreed they attended the move out inspection June 2, 2011 and that the condition inspection report was not completed at that time. Because the photographs were taken, and the condition inspection report was completed, after the move out inspection in the absence of the Tenants, I find they do meet the requirements to prove the condition of the rental unit at the end of the tenancy.

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 that the rental unit was left in an unclean state. Accordingly, the evidence before me is verbal testimony and I find the disputed verbal testimony insufficient to meet her burden of proof. Therefore I dismiss the Landlord's claim of \$80.00 for cleaning the rental unit.

In relation to travel costs, I find that the Landlord has chosen to incur costs that cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. The Act does not provide for costs of doing a landlord's business. Therefore, I find that the Landlord may not claim travel costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*, and her claim of \$210.00 is hereby dismissed.

The Landlord has partially succeeded with her claim; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$4,050.00** (\$4,000.00 + \$50.00). This Order is legally binding and must be served upon the Tenants.

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 06, 2012.

Residential Tenancy Branch