



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 a monetary order.

The hearing was conducted via teleconference and was attended by both the landlord 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 compensation 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 provided into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on August 17, 2010 for a month to month tenancy beginning on September 1, 2010 for the monthly rent of \$1,150.00 due on the 1st of each month with a security deposit of \$575.00 and pet damage deposit of \$200.00 paid;
- A copy of an email from the tenant to the landlord dated June 15, 2011 indicating he may or may not move out either that day or the next but that he may also want to return if he is not granted entry to the United States;
- A copy of an email from the tenant to the landlord dated July 4, 2011 seeking "reimbursement" from the landlord and indicating that he has left a set of keys and the garage door opener with his "friends who can return them to you."; and
- Receipts for mailbox lock key replacement; rental unit lock key replacement; garage door openers and front door key replacements; and delivery of personal belongings left by tenant.

The landlord testified the tenant emailed her prior to May 1, 2011 to advise that he did not have sufficient funds for his cheque to clear for May rent and as a result she did not cash his cheque until late May or early June 2011. The tenancy agreement provides by handwritten notation an "NSF Cheques/Returned Cheques subject to a \$50.00 fee.

The parties agreed the tenant failed to pay rent for the months of June and July 2011. The tenant submits that as a result of many deficiencies during the tenancy including living through some construction completed on the building envelope and based on his proposals to the landlord that he be compensated for the work he felt it was fair to not pay rent for the last two months of the tenancy. The tenant acknowledged that he did not have explicit approval from the landlord for his proposals.

The tenant acknowledged in the hearing that the notice he gave the landlord of ending the tenancy was in the email dated June 15, 2011. He also submits that his intention from his email of July 4, 2011 was to confirm he was not returning and that the landlord would contact him to discuss the return of the keys and remotes. The landlord testified that she has not yet received any keys or remotes from the tenant or the tenant's friend.

The tenant does not dispute that the keys and remotes were not returned; that the unit required cleaning at the end of the tenancy; that the drawer face plate was damaged; or that he had attempted to change the light bulb in the dining room fixture but could not do it properly after several hours. As to the belongings left behind the tenant testified he was leaving them because he thought the next tenant could benefit from them.

The landlord testified that she had to remove these belongings and that while she held them for 90 days in accordance with the *Act* and Residential Tenancy Regulation she deemed the value to be less than \$500.00 and she donated the items to a local charity.

The landlord seeks the following compensation:

Description	Amount
Rent – June/July 2011	\$2,300.00
Key/Post Box Lock Replacement	\$440.40
NSF Charges – May rent	\$25.00
Cleaning	\$300.00
Repairs	\$86.95
Removal/Storage of personal belongings	\$100.00
Total	\$3252.35

Analysis

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 26 of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Section 45 of the *Act* allows a tenant wanting to end a tenancy to do so by giving the landlord notice of this intention that is effective not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 52 requires this notice be in writing and must be signed by the tenant; give the address of the rental unit; and state the effective date of the notice. While the parties provided the email from the tenant dated June 15, 2011 as the notice provided by the tenant, I find that it does not comply with Section 52, most importantly, because it fails to provide an effective date.

If, however, I accept that this is the notice given by the tenant, the earliest the tenancy could end, based solely on the date the tenant provided it to the landlord, would be July 31, 2011.

From the tenant's testimony, he did not have an explicit agreement from the landlord allowing him to withhold any rent and he did not have an order from a Dispute Resolution Officer allowing him to deduct any rent. As such, I find the landlord suffered a loss of rental income for the months of June and July 2011.

In relation to the landlord's claim for \$25.00 NSF charges, I find that as the landlord did not cash the cheque until such time as the cheque cleared through the tenant's account, she did not suffer any loss and as such is not entitled to compensation for NSF charges when none were incurred.

Section 37 of the *Act* requires a tenant who is vacating the rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the

landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on testimony of both parties, I accept that tenant failed to comply with Section 37 by not returning all the keys and remotes and as a result I find the landlord suffered a loss for the replacement of all keys and remotes as supported by her receipts. I also accept that the tenant failed to leave the unit reasonably clean and undamaged, and as a result I find the landlord suffered a loss for repairs; cleaning; and removal/storage of personal items, and I find the amounts submitted by the landlord to be reasonable based on the photographic evidence provided.

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 and pet damage deposit or file an Application for Dispute Resolution to claim against the deposits. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security and pet damage deposits.

From the email submissions from the landlord I accept the landlord had the tenants forwarding address prior to the end of the tenancy and as I have found the tenancy ended on July 31, 2011 the latest the landlord should have returned the security deposit and pet damage deposit or filed an Application for Dispute Resolution to claim against the deposit was August 15, 2011. The landlord filed her Application on December 2, 2011.

The landlord provided testimony and confirming documentary evidence that during the time of the events that are under dispute in her claim she learned that her father was terminally ill and she became his primary caregiver after taking a leave from her employment. The landlord testified that her father passed away in September 2011.

While I accept the landlord was undergoing very intense personal trauma at the time she would have been required to file her Application, I also note that she did not file her Application until several months later and primarily in response to an email she received from the tenant in November 2011 where the tenant threatens to file a claim against the landlord should she not return the security deposit and pet damage deposit.

As a result, while I may have considered a short extension of the deadline in order to have the landlord find an agent to represent her in these matters, I find to extend the timeframe by several months would prejudice the respondent tenant and as such I dismiss the portion of the landlord's Application to extend the deadline obligations of

Section 38. I find the tenant is entitled to double the amount of the security and pet damage deposits.

Conclusion

For the reasons above I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3277.35** comprised of \$2,300.00 rent owed; \$440.00 Key/Remote replacement; \$300.00 cleaning; \$86.95 repairs; \$100.00 removal/storage of personal belongings; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct double the amount of the security deposit and pet damage deposit in the amount of \$1,550.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,727.35**.

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: February 15, 2012.

Residential Tenancy Branch