



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR MNSD O FF

Introduction

This Dispute Resolution hearing to deal with an Application by the landlord for a monetary order against the tenant for money owed or compensation for damage or loss under the Act and to retain the security deposit as partial satisfaction for the amount claimed. The hearing was also convened to deal with a cross Application by the tenant seeking the return of the security deposit.

Both the landlord and the tenants were present and gave testimony.

Preliminary Issue(s)

At the commencement of the hearing the landlord, made a verbal request for an adjournment of the hearing because the landlord was out-of-province and her circumstances had impeded her ability to prepare for the hearing and submit evidence. No written request for an adjournment was received.

Rule 6.1 of the Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if *"written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the hearing."*

In this instance, the landlord had made application on December 13, 2011 and the hearing was scheduled for February 29, 2012. The landlord testified that she attempted to contact the tenants to get consent for an adjournment without success.

In some circumstances proceedings can be adjourned after the hearing has commenced. However, the Rules of Procedure contain a mandatory requirement that the Dispute Resolution Officer must look at the oral or written submissions of the parties; consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose]; consider whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding; and weigh the degree to which the need for

the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and assess the possible prejudice to each party.

At the hearing, the tenants were asked whether or not they would consent to the landlord's request that the matter be adjourned and the tenants stated that they were not amenable to the dispute resolution hearing being adjourned and reconvened at a later date.

I found that:

- the landlord did not submit a written request at least 3 days prior to the hearing,
- the applicant was not in agreement with an adjournment,
- the landlord had over two months to prepare for her application to be heard and to submit the necessary evidence and,
- that a delay would unfairly prejudice the tenants who were awaiting the disposition of their security and pet damage deposits.

Accordingly, I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other unwilling party and the landlord's request for an adjournment was denied. The hearing then proceeded as scheduled.

Issue(s) to be Decided

Landlord

The issue to be determined, based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act*.

Tenant

The tenant was seeking to receive a monetary order for the return of the tenant's security deposit and the issue to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of double the security deposit pursuant to section 38 of the *Act*.

Background and Evidence

The landlord submitted into evidence, copies of communications between the parties, copies of cheques and receipts.

The landlord testified that the tenancy originally began in November 2009 as a one-year fixed term tenancy. The landlord testified that at the end of that period the tenant had notified that landlord that they would be vacating. However, according to the landlord,

the parties entered into a verbal agreement that the landlord would reduce the rent and the tenant would remain until "Spring". The landlord testified that the tenants did not leave in Spring, but gave their Notice to vacate effective November 30, 2011. In her application, the landlord was claiming reimbursement for a portion of the rent reduction granted to the tenants.

The landlord testified that the tenants agreed to let her show the rental unit to prospective renters during the month of November to have it rented by December 1, 2011. However, the landlord found that the unit was cluttered, untidy and smelled of dog. The landlord testified that people viewing the unit became disinterested because of the state of the tenant's housekeeping. The landlord described it as "almost a hoarder situation". In addition, according to the landlord, the tenant's dog terrorized some people who tried to view the unit. The landlord testified that the tenant was responsible for the fact that she was unable to re-rent the unit for December 1, 2011 and she is seeking compensation of \$1,250.00 for loss of rent.

The tenant stated that their housekeeping was not deficient and that the furniture they had was not prohibitive. The tenant stated that the layout of the basement included two furnaces located in the centre of the unit and this resulted in narrow hallways to some rooms. The tenant denied that their unit was unsuitable to view and objected to the allegation that they had violated their obligations under the Act. The tenant pointed out that they cooperated fully with the landlord's requests to show the unit and that the evidence submitted by the landlord actually confirms their willingness to accommodate showings and prepare the unit to be seen.

The tenant does not agree with any part of the landlord's claims and feels that they are entitled to the return of the security deposit by law and the landlord has no valid reason to retain it.

Analysis

With respect to the refund of the security deposit, I find that these funds are always held in trust for the tenant unless an order is issued or written permission is given by the tenant for the landlord to keep it. Pursuant to section 38 of the Act, I find that the \$1,350.00 security deposit and pet damage deposit must be returned to the tenant .

With respect to the landlord's monetary claim for damages in the amount of \$2,100.00, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. (my emphasis)

I find that tenants are at liberty to maintain their home in the style and manner they choose, provided the condition is not so degraded that it would constitute violation of section 32 of the Act.

In fact Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that there is an obligation under section 37(2) of the Act that when the tenant vacates a unit, they must return it in the same state as when they took occupancy and leave the rental premises in a reasonably clean, and undamaged condition, except for normal wear and tear. The landlord readily agreed that the tenant had complied with this section of the Act.

However, there is nothing in the Act that requires a tenant during the tenancy to alter their conduct or surroundings to facilitate the landlord's efforts to re-rent the unit while the tenants still have possession of the unit .

Given the above, and based on the evidence before me, I accept the tenant's testimony that the unit was crowded but not dangerous and that it was not a health hazard. As I am not able to find that there was any violation of section 32 of the Act the landlord's claim for compensation for the loss of rent for December, has not satisfied element 2 of the test for damages and must therefore be dismissed.

With respect to the additional rent claimed under the tenancy agreement, I find that the lower rental rate was to be paid pursuant to a valid verbal tenancy agreement between the parties that replaced the original fixed term agreement. I further find that the second tenancy agreement could not be considered as a fixed term agreement ending the tenancy in "Spring", as nothing was in writing.

Therefore, I find that the landlord's monetary claim for additional rent owed by the tenant must also be dismissed.

With respect to the security and pet damage deposit, I find that the tenant is entitled to be refunded the \$1,350.00 security and pet damage deposit and the \$50.00 cost of the application. Accordingly I find that the tenant is entitled to a monetary order of \$1,400.00.

Conclusion

I hereby grant a monetary order in favour of the tenant for \$1,400.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

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 29, 2012.

Residential Tenancy Branch