



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR
 MNSD FF

Preliminary Issues

Upon review of the Tenant's application for dispute resolution, at the onset of the hearing, the Tenant acknowledged that she had written the Landlord's partner's name under the Tenant section of her application, in error, and requested that his name be removed from this proceeding.

The Landlord confirmed her partner does not do the Landlord's business and should not be a named party to this dispute.

As per the aforementioned I have amended the Tenant's application and removed the name of the male listed in error, pursuant to section 64 (3)(c) of the Act that stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Introduction

This hearing dealt with cross Applications for Dispute Resolution by the Landlord and the Tenant.

The Landlord submitted an application for a Monetary Order for damage to the unit, site or property, and for unpaid rent or utilities.

The Tenant filed for a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation and/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 sections 7 and 67 of the Act?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation and/or tenancy agreement?
4. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to sections 7 and 67 of the Act?

Background and Evidence

The parties agreed they entered into a month to month tenancy agreement that began on September 25, 2011. Rent was payable on the twenty fifth of each month in the amount of \$1,150.00 and on September 11, 2011 the Tenant paid \$575.00 as the security deposit. No condition inspection report form was completed at move in or at move out. On December 28, 2011, the Tenant provided written notice to end her tenancy effective January 15, 2012 and she vacated the property as of January 15, 2012. The Tenant provided her forwarding address in writing to the Landlord on January 26, 2012.

The Landlord affirmed that on December 15, 2011, she had a verbal discussion with the Tenant at which time the Tenant requested to end her tenancy as of January 1, 2012 because she had found a more desirable rental unit elsewhere. The Landlord stated that after she considered the Tenants request she informed the Tenant that she would allow her to pay half of the month's rent for up to January 15, 2012 and the Landlord would attempt to re-rent the unit for as soon as possible and would refund the Tenant the balance of her security deposit if the unit was re-rented. The Tenant paid \$580.00 cash for January rent.

The Landlord advised she began advertising the unit as of December 15, 2011 and was not able to re-rent the unit until March 15, 2012. At the end of the tenancy the Landlord initially told the Tenant that there was not much damage to the unit and it was clean therefore she would not charge the Tenant for the required repairs. The Landlord indicated that because this has now come to arbitration she is seeking compensation for the remainder of January 2012 rent because the Tenant did not provide a full month's notice plus the cost of repairs which amounts to \$300.00 for painting and carpet cleaning. She and her partner did the work themselves and did not incur a cost to rent the steam cleaner as they borrowed one. The \$300.00 claim for damages includes their labour and cost of paint.

The Tenant affirmed that during her conversation with the Landlord they discussed the Tenant ending her tenancy as of January 15, 2012 and it was her understanding that the Landlord would be returning her security deposit to her because it was needed to cover costs at her new unit.

The Tenant took responsibility for damage that was caused to two walls, one in the bedroom and one in the dining room. She argued that the remainder of the damage shown in the Landlord's photographs were in existence prior to the start of her tenancy.

In closing the Tenant argued the principles of detrimental reliance and estoppel by representation claiming that she entered into the tenancy agreement at the new rental unit based on the Landlord's agreement to accept half of month's rent, ending her tenancy effective January 15, 2012, and the return of her security deposit. She advised she paid the security deposit to secure the new unit December 28, 2011.

The Landlord refuted the Tenant's argument stating that her agreement was not to lose a half of month's rent; rather the Tenant was informed she could move out early but the difference in rent from when the unit was re-rented would be deducted from the security deposit. She confirmed this arrangement was based on a conversation and was not in writing; therefore it is "my word against her word".

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a copy of the tenancy agreement, the Tenant's written notice to end tenancy, the Tenant's forwarding address document, the Tenant's affidavit, and the written statements by 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.

Landlord's Application

Section 5 of the Act stipulates as follows:

- (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 45 (1) of the Act provides that 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.

Section 26 (1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case the facts are as follows:

- rent is payable on the 25th of each month for the following calendar month's rent in the amount of \$1,150.00, and
- the Tenant paid \$580.00 on December 28, 2011 for January 2012 rent short paying by \$570.00, and
- on December 28, 2012, the Tenant provided written notice to end her tenancy effective January 15, 2012.

The parties confirmed they had a verbal agreement which involved the tenancy ending early on January 15, 2012. However they disagree as to other terms of that agreement in relation to the payment of January 2012 rent and the security deposit.

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 Tenant has the burden to prove the Landlord agreed to end the tenancy early on January 15, 2012 for rent of \$580.00 and the Tenant would be entitled to the return of her full security deposit. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the Tenant's burden of proof.

As I have found there to be insufficient evidence to prove the parties had an agreement relating to the payment of rent and return of the security deposit, I do not accept the

Tenant's arguments of detrimental reliance or of estoppel by representation as there is insufficient evidence to prove what the obligations were relating to their agreement.

After careful consideration of the aforementioned I find that the Tenant breached section 45(1) of the Act by not providing sufficient notice to end her tenancy and section 26(1) of the Act by failing to pay her January 2012 rent in full; which caused the Landlord to suffer a loss of rent for January 2012 in the amount of \$570.00. The Landlord began advertising the unit as of December 15, 2011 in attempts to mitigate her loss however she was not able to re-rent the unit until March 1, 2012. Based on the aforementioned, I find the Landlord has met the burden of proof to claim for her loss and I award her **\$570.00** for lost March 2012 rent.

Part 3 Section 21 of the Regulations stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

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.

In this case I heard disputed verbal testimony as to the damage which was caused during the tenancy and that which was present at the onset of the tenancy. The Tenant did however accept responsibility for marks on two of the walls (one wall in the bedroom and one wall in the dining room). The Landlord did not provide evidence as to the actual cost of the repairs.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit with some damage to two of the walls at the end of the tenancy.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Landlord is entitled to nominal damages for the marks left on the two walls in the amount of **\$40.00**.

Tenant's Application

The evidence is that the tenancy ended January 15, 2012, pursuant to section 44 of the Act, and the Tenant provided the Landlord with her forwarding address in writing on January 26, 2012.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than February 10, 2012; the Landlord did not file her application until February 23, 2012.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double her security deposit plus interest in the amount of **\$1,150.00** (2 x \$575.00 + interest of \$0.00).

I find that the Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Offset Monetary Awards

Landlord's Claim \$570.00 + 40.00	\$ 610.00
LESS: Tenant's Claim \$1,150.00 + 50.00	<u>\$1,200.00</u>
Offset amount due to the TENANT	<u>\$ 590.00</u>

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$590.00**. This Order is legally binding and must be served upon the Landlord.

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: March 30, 2012.

Residential Tenancy Branch