



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord’s Application requested a monetary order for unpaid rent or utilities, damage to the unit, site or property, compensation for damage or loss, recovery of the filing fee, and an order to keep all or part of the security deposit and pet damage deposit. The Tenant’s Application requested a monetary order for the security deposit and pet damage deposit, compensation for damage or loss, and the filing fee.

The Landlord and Tenant attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The parties agree that they had a work agreement for the rental unit which the Landlord was to repay to the Tenant over a period of several months at a rate of \$200.00 per month. The parties had agreed that the repayment could be in the form of a rent reduction for five months. As a result the parties agreed that the rent paid during the five month period August 01, 2011 to December 01, 2011 of the tenancy would only be \$600.00 per month with parking and \$580.00 per month without parking.

As part of the Landlord’s claim he requests to have the Tenant repay him for work that the Landlord paid for through rent reductions for several months. The Landlord is not satisfied the work was completed as agreed. The Landlord has referred to these amounts in his claim as unpaid rent.

Part of the Tenant’s claim is a request to have the Landlord pay him an additional 15% in costs for the work and labour in the amount of \$150.00. The Tenant stated that the rental unit was only partially finished when he agreed to the tenancy and that the condition of the rental unit required work to be done, which allegedly caused him stress and anxiety and he feels he undercharged the Landlord for the work done. The Tenant is also seeking \$200.00 that the Landlord was to pay him in the month of December 2011 for work that he has already done for the Landlord.

I find that the Landlord and Tenant significantly comingled their employment agreement and their tenancy agreement and have not set out terms and conditions in a manner that clearly communicates the rights and obligations under it. The Landlord and the Tenant are claiming costs against one another for work performed or work not performed.

Section 6 (3) of the Act states:

- 6 (3) A term of a tenancy agreement is not enforceable if*
- (a) the term is inconsistent with this Act or the regulations,*
 - (b) the term is unconscionable, or*
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

As a result, I find that I do not have the jurisdiction under the Act to proceed with the Tenant's claims for an additional \$150.00 (15% in costs) for the work and labour and \$200.00 that he stated the Landlord was to pay him in the month of December for work allegedly done. The Tenant's claims for \$150.00 and \$200.00 are dismissed as a result.

I also find I do not have the jurisdiction under the Act to proceed with the Landlord's claims for overpaying the Tenant for work that the Landlord alleges was not performed, which the Landlord is attempting to recover by alleging "unpaid rent". I find that the Tenant paid the monthly rent to the Landlord as agreed and that he does not owe the Landlord any unpaid rent for his tenancy. The Landlord's claim for \$620.00 is dismissed as a result.

The Landlord is claiming for travel costs and time spent dealing with contractors, which he refers to as his repair management fee. The Landlord has not provided any receipts for the travel costs or itemization of hours allegedly spent with contractors.

The Tenant is claiming for 4 hours work time missed at a rate of \$20.00 per hour to attend the rental unit to participate in a walkthrough inspection with the Landlord when the tenancy ended on November 30, 2011, because the Landlord only advised him of the intended inspection the day before it was to occur.

I find that the Landlord has provided insufficient evidence of costs incurred for travel or dealing with contractors. I also find that the Act does not cover the cost of doing business or the cost or time spent to deal with tenancy matters such as inspections when a tenancy ends. As a result I dismiss the Landlord's claim for \$120.00 and the Tenant's claim for \$80.00.

The Landlord's claim for damage and loss for unauthorized alterations valued at \$1,019.00, the filing fee \$50.00, and the request to keep the security deposit and pet deposit are dealt with in the balance of my decision.

The Tenant's claim for damage and loss for displacement from residence valued at \$260.00, living room fixture valued at \$44.78, medicine cabinet and lazy suzan valued at \$207.39, and double the return of the security deposit and pet damage deposit valued at \$1,600.00 (\$800.00 x 2), and the filing fee, are dealt with in the balance of my decision.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage to the unit, site or property, compensation for damage or loss, recovery of the filing fee, and an order to keep all or part of the security deposit and pet damage deposit?

Is the Tenant entitled to a monetary order for the security deposit and pet damage deposit, compensation for damage or loss, and the filing fee?

Background and Evidence

The parties agree that the tenancy commenced on July 01, 2010 and that rent was due on the first of each month. The parties agree that the Tenant paid a security deposit of \$400.00 and a pet damage deposit of \$400.00 at the start of the tenancy. Neither party provided a copy of the tenancy agreement in evidence. The parties confirmed that they did not do incoming or outgoing inspection reports.

The Landlord stated that he was not able to do a move in condition inspection with the Tenant because he was busy moving himself and the Tenant seemed trustworthy.

The parties agree that the tenancy agreement was initially that that the monthly rent for the rental unit was \$800.00 per month or \$780.00 without parking. The parties agree that for the period August 01, 2011 to December 31, 2011, the Landlord agreed to compensate the Tenant for work done by the Tenant on the rental unit in the amount of \$200.00 for each of those five months, by reducing the rent to \$600.00 per month or \$580.00 without parking. The parties agree that the Landlord provided the Tenant the \$200.00 in compensation for the work through a rent reduction. The parties agree that the Tenant received the \$200.00 compensation for work for four months only as the tenancy ended prior to December 2011.

The parties agree the Tenant provided the Landlord with their forwarding address in writing on November 29, 2011, and requested return of their security deposit and pet damage deposit. The parties agree that the Tenant did not sign over the security deposit or pet damage deposit to the Landlord. The parties agree that the Tenant

returned the keys to the Landlord as requested at the end of the tenancy. The Landlord did not return the deposits to the Tenant. The Landlord applied for dispute resolution on December 02, 2011.

The parties agree that the rental unit was flooded on November 23, 2011 and the Tenant could not remain in the rental unit while the flood restoration work was occurring. The parties agree that the tenancy ended November 30, 2011. The parties agree that the Tenant had paid the November 2011 rent.

Landlord's claim for damage/ loss for unauthorized alterations

The Landlord stated that the Tenant installed a medicine cabinet in the bathroom without his permission and removed the mirror that had been there previously.

The Landlord stated that the Tenant removed the Landlord's light fixture from the living room without his permission and replaced it with another. The Landlord provided a photo of the previous light fixture in the rental unit, and a copy of a retailer ad which the Landlord states is for a similar light fixture. The Landlord estimates the value of the light fixture at \$79.99 plus HST, and installation costs.

The Landlord stated that he does not feel the Tenant is qualified to remove the medicine cabinet and reinstall the mirror, or remove the living room light fixture and install another. The Landlord confirmed that he has not allowed the Tenant to access the rental unit to remove the items as he is worried the Tenant would cause damage. The Landlord stated that items are still in the rental unit at this time and that his current tenant is using these items.

The Landlord is requesting \$1,019.20 to have the items removed and replaced. The Landlord has submitted copy of an estimate from a restoration company for \$1,019.20 to do the work and provide the light fixture and mirror.

The Tenant stated that he installed the medicine cabinet and the light fixture and that he is capable of removing them. The Tenant stated that he is a qualified HVAC technician and that he has access to certified electricians and certified carpenters through his work that could assist him with removal or installation of items if necessary. The Tenant stated that the Landlord refused him access to remove the items from the rental unit on November 30, 2011 when he was ready to do so. The Tenant's position is that the Landlord is not entitled to any compensation for the installation of new items, as the current tenant is using the medicine cabinet and light fixture.

Tenant's claim for damage/ loss for living room fixture, medicine cabinet, and lazy suzan

The Tenant stated that due to the flood, restoration work, and a subsequent sewage flood in the rental unit he was unable to remove some of his personal items until November 30, 2011. The Tenant stated that the Landlord denied him access to the rental unit to remove the living room fixture, medicine cabinet, and lazy suzan and to

undertake replacement of the Landlord's items on November 30, 2011, and told him he would be considered trespassing on his property if he returned. The Tenant is seeking compensation for the living room fixture valued at \$39.98 plus HST, medicine cabinet valued at \$129.00 plus HST, and lazy suzan valued at \$69.99 plus HST. The Tenant has provided a copy of his receipts into evidence, for these items which he purchased new during his short tenancy.

The Landlord's position is that the Tenant did not have permission to install these items in the rental unit. The Landlord stated that he does not feel the Tenant is qualified to remove medicine cabinet and reinstall the mirror, or remove the lazy suzan, or remove the living room light fixture and install another. The Landlord confirmed that he has not allowed the Tenant to access the rental unit to remove the items as he is worried the Tenant would cause damage. The Landlord stated that items are still in the rental unit at this time and that his current tenant is using these items. The Landlord's position is that the Tenant is not entitled to be reimbursed for these items.

Tenant's claim damage/loss for displacement from the rental unit

The Tenant stated that he had insurance which covered the flooding of the rental unit, damage to his belongings, and any hotel costs for being displaced. The Tenant stated that his insurance covered up to \$5,000.00 with a \$1,000.00 deductible required. The Tenant stated that he would like a rent refund for the dates that he was unable to reside in the rental unit November 23-30, 2011, which he values at \$260.00. The Tenant stated that he had to stay elsewhere during November 23-30, 2011. The Tenant stated that the insurer accepted his claim and considered it a normal claim.

The Landlord stated that he does not feel the Tenant is entitled to his claim for rent reduction for November 23 to 30, 2011 as the Tenant had insurance. The Landlord stated that the flood was not his fault and the claim was accepted by his insurer as well as a normal insurance claim. The Landlord stated that the Tenant had access to compensation through his insurer for any costs, including accommodation costs, due to the flood.

Security deposit and pet damage deposit claimed by both Landlord and Tenant

The Tenant stated that the Landlord failed to do the move-in condition inspection and report as required by the Act. The Tenant stated that a move-out condition inspection report was also not done. The Tenant stated that he did not provide the Landlord with written consent to keep any of his security deposit and pet damage deposit. The Tenant stated that the Landlord does not have the right to keep these deposits and that the Act requires him to return these within 15 days of the end of the tenancy or pay double. The Tenant provided his address to the Landlord in writing on November 29, 2011. The Tenant is requesting double the return of the security deposit and pet damage deposit valued at \$1,600.00 (\$800.00 x 2).

The Landlord agrees that he received the Tenant's written forwarding address on November 29, 2011. The Landlord stated that he applied for dispute resolution on December 02, 2011, within 15 days of receiving the address and the tenancy ending. The Landlord stated that he feels he is entitled to keep the security deposit and pet damage deposit because of the damages and losses he has incurred due to the Tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Security deposit and pet damage deposit claimed by both Tenant and Landlord

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit or pet damage deposit.

The Landlord did apply for dispute resolution, within fifteen days of the end of the tenancy and receipt of the forwarding address of the Tenant, requesting to retain the security deposit and pet damage deposit. However, when a Landlord fails to properly complete a condition inspection report, the Landlord's claim against the security deposit and pet damage deposit for damage to the property is extinguished. Because the Landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, as required by section 23 and 35 of the Act, they lost their right to claim the security deposit and pet damage deposit for damage to the property.

The Landlord was therefore required to return the security deposit and pet damage deposit to the Tenant within 15 days of the later of either the tenancy ending or having received the Tenant's forwarding address in writing. The parties agree that the Landlord received the Tenant's forwarding address on November 29, 2011, and the tenancy ended on November 30, 2011, however, the Landlord did not return the security deposit and pet damage deposit within 15 days of the end of the tenancy.

Because the Landlord's right to claim against the security deposit and pet damage deposit for damage to the property was extinguished, and they failed to return the Tenant's security deposit and pet damage deposit within 15 days of having received the Tenant's forwarding address, section 38 of the Act requires that the Landlord pay the Tenant double the amount of the deposits for a total of \$1,600.00 (\$400.00 security deposit + \$400.00 pet deposit x 2).

As a result of the Landlord's failure to return the security deposit and pet deposit, I find that the Landlord owes the Tenant \$1,600.00 which represents double the amount of the deposits.

With regards to both parties claim for damages and losses, section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's claim for damage/ loss for unauthorized alterations

I find the Landlord has not provided sufficient evidence of any loss with regards to the alterations. The Landlord has not removed the items or incurred any cost at this time to remove or replace the items claimed. The Landlord has also failed to provide any receipt for the light fixture which he claims the Tenant removed from the rental unit. The Landlord's current tenant is using the items in the rental unit. I find that the Landlord is not entitled to the \$1,019.20 claimed.

Tenant's claim for damage/ loss for living room fixture, medicine cabinet, and lazy suzan

I find the Tenant has provided sufficient evidence of a loss with regards to the living light room fixture, medicine cabinet, and lazy suzan. The Tenant 's evidence supports that the items were recent purchases and he has provided into evidence each receipt for these items. I find that Landlord prohibited the Tenant from removing these items from the rental unit, and the Landlord is currently allowing his new tenant to use these items which he acknowledges belong to the Tenant. I find the Tenant is entitled to the value of the each items as stated on the receipts he has provided into evidence. The Tenant is entitled to \$44.78 (\$39.98 plus HST) for the living light room fixture; \$144.48 (\$129.00 plus HST) for the medicine cabinet; and \$78.39 for the lazy suzan (\$69.99 plus HST).

Tenant's claim damage/loss for displacement from the rental unit

I find that the Tenant is not entitled to reimbursement for his rent for the period November 23 to 30, 2011 in the amount of \$260.00. The rental unit was flooded and frustrated the tenancy. The parties agree that they had flood claims accepted as normal claims by their insurer and the Landlord was not found at fault for the flood. The Tenant did not provide a copy of his insurance or rebates received into evidence, so there was insufficient evidence provided regarding any deductible he had paid. The Tenant did not provide any evidence or receipts for costs incurred during the period November 23, to 30, 2011. Based on the evidence of the parties, I find that the Tenant did not suffer a loss.

As the Landlord has not succeeded in their Application, I dismiss the Landlord's request for the filing fee.

As the Tenant has partially succeeded in their Application, I grant his request for the filing fee of \$50.00.

I grant the Tenant a monetary order for **\$1,917.65**, which represents double the return of the security deposit and pet damage deposit (\$800.00 x 2); damages and losses in the amounts of \$44.78 for the living light room fixture; \$144.48 for the medicine cabinet; \$78.39 for the lazy suzan; and the \$50.00 filing fee.

Conclusion

The Landlord's Application is dismissed in its entirety.

The Tenant's application is dismissed for \$150.00 (15%) claimed in costs for work and labour, \$200.00 claimed for payment due December 2011 for work done, \$80.00 claimed for work time/wages lost to attend a meeting at the rental unit with the Landlord for a final walk through, and \$260.00 claimed for damages and losses due to displacement from the rental unit due to a flood.

I find that the Tenant is entitled to a monetary order in the amount of **\$1,917.65**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims).

The order accompanies the Tenant's copy of this decision.

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 19, 2012.

Residential Tenancy Branch