



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, MNDC, FF

Introduction

This hearing was scheduled to deal with the landlord's application for a Monetary Order for unpaid rent and compensation for damages and cleaning. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The parties confirmed service of documents upon them except for the landlord's second evidence package. The tenant stated that she had not received the landlord's second evidence package that the landlord stated was sent via registered mail on February 28, 2012. The landlord stated she did not have the registered mail receipt available at the time of the hearing. I excluded the landlord's second evidence package in the absence of proof of service.

Although the landlord had not indicated the dispute code(s) associated to damage or cleaning in completing the application, the landlord clearly indicated her claim included damage and cleaning in the details of dispute section of her application. Therefore, I have amended the application to reflect the additional dispute codes.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent?
2. Has the landlord established an entitlement to recover losses for damages and cleaning from the tenant?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

I was provided undisputed evidence as follows: The tenancy commenced April 1, 2011 and the tenant paid a \$425.00 security deposit. The tenant was required to pay rent of \$850.00 on the 1st day of every month on a month-to-month basis. The tenant was permitted to keep two dogs in the rental unit and did not pay a pet deposit. The landlord did not prepare condition inspection reports.

I also heard that on December 21, 2011 the landlord either personally served the tenant or posted a 1 Month Notice to End Tenancy for Cause (the Notice). The tenant did not dispute the Notice. The tenant put a stop payment on the rent cheque for January 2012 and moved out of the unit January 7, 2012.

Below I have summarized the landlord's claims against the tenant and the tenant's responses.

Unpaid rent – \$850.00

The landlord is seeking to recover unpaid rent for January 2012 as the tenant put a stop payment on the cheque given to her on January 2, 2012.

The tenant stated she reluctantly gave the landlord a rent cheque on January 2, 2012 after the landlord threatened to give her a 10 Day Notice to End Tenancy for Unpaid Rent if the tenant did not pay the rent. The tenant acknowledged she put a stop payment on the rent cheque as she had advised the landlord she was probably moving out on the following weekend and then the tenant secured a new tenancy agreement as of January 2, 2012.

The tenant was of the position the landlord violated the Act with respect to entering the unit without permission or proper notice and that the repeated entry and harassment by the landlord over proper care of her dogs caused the tenant to leave early in January.

It was undisputed that the landlord had previously entered the tenant's unit on a number of occasions to walk the tenant's dogs. The landlord was of the position that was at the tenant's request or consent. The tenant acknowledged some requests or giving consent at times but not all of the times the landlord entered.

It was also undisputed that the landlord had sent the tenant text messages with respect to the tenant's dogs barking and the lack of attention the tenant provided her dogs. The tenant resented the landlord's statements that she did not properly care for her dogs.

It was undisputed that on December 16, 2011 the tenant sent the landlord a text message or email instructing the landlord not to enter the unit again and the tenant followed the text or email up with a written letter dated December 20, 2011. It was undisputed that the landlord's daughter entered the unit twice after the December 16, 2011 text or email message but there was no entry by the landlord or her family members after the tenant's December 20, 2011 letter.

The tenant had prepared to call a witness to testify as to the landlord being in the rental unit prior to December 16, 2011; however, I did not find it necessary to hear from the witness as the landlord did not deny that she entered the unit to allow the tenant's dogs to visit with her dogs.

On January 18, 2012 – after receiving the landlord's Application for Dispute Resolution the tenant sent the landlord a letter explaining that she ended the tenancy early due to the landlord's repeated unlawful entries in the rental unit and on-going harassment.

The tenant also stated she was unaware of her rights upon receiving the 1 Month Notice and thought she could leave the rental unit at any time after receiving such a Notice. The tenant submitted she is willing to pay for rent for six days of occupancy in January 2012.

Carpet Cleaning - \$222.88

The landlord is seeking to recover the costs of professionally cleaning the carpets. The landlord submitted that the carpeting was left dirty and the tenant's two dogs urinated on the carpeting.

The tenant submitted that there were stains on the carpet at the beginning of the tenancy and that she used a home carpet cleaner bi-weekly. The tenant was of the impression the landlord did not care about the carpets as the landlord permitted the tenant's muddy dogs to re-enter the unit after taking them on walks.

Wall repair and paint - \$49.78

The landlord is seeking to recover the cost of wall puddy and paint to repair the walls scratched by the tenant's dogs. The landlord's claim did not include time or labour to make the repairs.

The tenant did not dispute this claim.

General cleaning - \$150.00

The landlord is seeking to recover the cost of a cleaning lady. The landlord submitted that the tenant left the rental unit dirty.

The tenant acknowledged some cleaning was required but submitted the landlord's claim was excessive. The tenant also submitted that the rental unit was dirty when she moved in.

Evidence provided for this proceeding included copies of: photographs of the rental unit after the tenant vacated; invoice for the carpet cleaners; receipt for the wall repair and painting supplies; the duplicate of the cheque paid to the cleaning lady; the returned cheque for January 2012; the tenant's letter of December 20, 2011; the 1 Month Notice; the tenant's letter of January 18, 2012; copies of numerous text messages exchanged between the parties.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Unpaid rent

The landlord had served a 1 Month Notice to End Tenancy for Cause upon the tenant December 21, 2011. A tenant remains obligated to pay rent during that last month of tenancy upon receiving a 1 Month Notice. Therefore, the tenant owed rent on January 1, 2012 to the landlord and failure to pay the rent is a violation of the tenancy agreement and Act.

I find the landlord's statement to the tenant that she would serve the tenant with a 10 Day Notice if the tenant did not pay rent to be an accurate statement as to the landlord's rights to collect rent for January 2012 and such a statement does not constitute harassment.

The Act does permit a tenant to end a tenancy earlier than the effective date on a Notice to End Tenancy in limited circumstances. Section 45(3) permits a tenant to end a tenancy early if the landlord has breached a material term of the tenancy agreement and has not corrected the breach within a reasonable time after the tenant has given written notice to do so.

The courts have found that the right to quiet enjoyment, including freedom from unlawful entry and harassment by a landlord, is a material term of a tenancy agreement. Whether there was unlawful entry or harassment by the landlord prior to December 20, 2011 is not overly relevant to this dispute as there is undisputed evidence that after putting the landlord on written notice to stop entering her unit, the landlord complied with the request. In making this determination I have found that the written notice was made to the landlord on December 20, 2011 as I do not consider text message or email of December 16, 2011 constitutes written notice.

As I am satisfied the landlord did not enter the unit unlawfully after December 20, 2012 I find the tenant did not have a basis, under section 45(3) of the Act, to end her tenancy earlier than the effective date of the 1 Month Notice.

As the parties were informed during the hearing, the tenant has not filed an Application for Dispute Resolution and the issue of whether there was a violation by the landlord that would entitle the tenant to compensation for loss of quiet enjoyment was not an issue before me. Rather, the issues before me were whether the tenant had the legal right to end the tenancy earlier than the effective date of the 1 Month Notice or had the legal right to withhold rent. I find the tenant did not establish the right to either one, for the reasons explained above. Therefore, I award the landlord unpaid rent for the month of January 2012 in the amount of \$850.00.

Carpet cleaning

The Residential Tenancy Policy Guidelines provide that where a tenant smoked or had pets in the unit the tenant is generally required to clean the carpets at the end of the tenancy, regardless of the length of the tenancy.

In this case, the tenant had two dogs in the unit and the landlord has provided evidence that she incurred a cost of \$222.88 to have the carpets cleaned shortly after the tenancy ended. I find the landlord has established an entitlement to recovery of this cost and the landlord is awarded \$222.88.

Wall repair and painting

This claim was undisputed and was supported by a receipt establishing the landlord's loss. Therefore, the landlord is awarded \$49.78 for wall repair and painting.

General cleaning

The Act requires that a tenant leave a rental unit reasonably clean at the end of the tenancy. Upon review of the landlord's photographs I accept that the rental unit was left dirty and nowhere near reasonably clean. I find a charge of \$150.00 for the amount of cleaning required to be reasonable. In addition, the landlord has provided evidence that she paid this amount to a cleaning lady.

Although the condition of the rental unit at the beginning of the tenancy was in dispute it is important to note that the Act does not exempt the tenant from leaving the unit reasonably clean at the end of the tenancy based upon its state of cleanliness at the beginning. Rather, if there was an issue with the condition of the rental unit at the beginning of the tenancy that would have been the time for the tenant to raise the issue with the landlord.

In light of the above, I grant the landlord's request to recover \$150.00 from the tenant for cleaning.

Monetary Order

As the landlord was successful in this application I award the landlord the filing fee paid for this application. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed by the tenant. Accordingly, I provide the landlord a Monetary Order calculated as follows:

Unpaid rent – January 2012	\$ 850.00
Carpet cleaning	222.88
Wall repair and painting	49.78
General cleaning	150.00
Filing fee	50.00
Less: security deposit	<u>(425.00)</u>
Monetary Order for landlord	\$ 897.66

The Monetary Order must be served upon the tenant and may be enforced in Provincial Court (Small Claims) as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$897.66 to serve upon the tenant.

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: April 03, 2012.

Residential Tenancy Branch