



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR, MNSD, MNDC, FF
Tenant: MNSD

Introduction

This hearing dealt with the cross Applications for Dispute Resolution. Both parties sought a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and her witness 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 utilities; for cleaning; and 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 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for all or part of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on January 7, 2011 for a monthly rent of \$1,250.00 due on the 7th of each month with a security deposit of \$625.00 was paid. Clause 7 of the tenancy agreement states: "The term of the Lease is a periodic tenancy commencing at 12:00 noon on January 7, 2011 and continuing on a year to year basis until the Landlord or the Tenant terminates the tenancy."

The landlord asserts the tenant understood the agreement was for a 1 year fixed term as he had paid ½ of the year's rent on January 7, 2011. The tenancy ended on or before September 6, 2011 when the tenant had removed all of his possessions, with a few items left behind and had returned the key to the landlord.

The landlord submits that the tenancy was a 1 year fixed term that had been due to end on January 6, 2012 and as a result of the tenant ending the tenancy he is in breach of the agreement. The landlord seeks compensation for rent in an amount equivalent to the 9 days of lost rent (\$375.00) that the unit was vacant before it was re-rented.

The tenant submits that he ended the tenancy in accordance with Clause 69 of the tenancy agreement. The clause stipulates the tenant may end a periodic tenancy by giving the landlord at least one month's written notice. The tenant has submitted a copy of a written notice to the landlord dated July 21, 2011 indicating he would be ending the tenancy on August 31, 2011.

The landlord testified she never received the tenant's written notice until she received his evidence for this hearing, that she had only been giving verbal notice by the tenant towards the end of July 2011. The tenant testified that they usually spoke about issues as they arose verbally and then followed up in writing and that this was no different that he informed the landlord verbally and then followed up in writing.

The parties agree the landlord returned \$250.00 of the security deposit to the tenant on September 4, 2011 when he returned the keys to the landlord. The tenant testified that he contacted the landlord several times in the fall of 2011 to find out when she would return the balance and that he provided his forwarding address in writing on January 17, 2012. The landlord not dispute receipt of the forwarding address on this date.

The parties agree the tenant had not paid a hydro bill in the amount of \$38.94. The landlord seeks compensation for this amount plus \$1.06 for the cost of writing a cheque and a stamp, for a total compensation of \$40.00. The tenant did not dispute this full amount.

Clause 60 of the tenancy agreement stipulates the tenant is responsible for professionally cleaning carpets at the end of the tenancy and the parties agreed, in the hearing, the tenant should be responsible for carpet cleaning. The tenant however believes the costs the landlord seeks are too high as he states he obtained 3 estimates. Documentary evidence of any estimates obtained by the tenant was not provided. The tenant also asserts the amount should be lessened based on the duration of the tenancy.

The landlord submitted a receipt for carpet cleaning in the amount of \$179.20 but the tenants submits he should only have to pay \$75.00 based on his research into carpet cleaning services prices.

The landlord testified that when the tenant left the unit he left some possessions behind and that she has had to remove these items and store them from the end of the tenancy and still has them to this date. The landlord provided a photograph of the items. The tenant submits that when he spoke to the landlord about these items she told him she had donated them to her church.

The landlord provided no documentary evidence or indication as to how the amount of \$155.00 was determined for the amount sought for hauling and removal - this is the amount she withheld from the security deposit when she returned some of the deposit to the tenant on September 4, 2011.

The landlord also seeks compensation for the following items during the tenancy:

1. \$300.00 for compensation in assisting the tenant to obtain and move furniture in the early days of the tenancy when the landlord's husband used his own vehicle and gas to move furniture for the tenant. The tenant asserts he offered to pay the landlord's husband but he said it was not necessary. The landlord's husband testified the tenant made no such offer and did not even thank him for the help. The landlord confirmed they did not indicate to the tenant at the time that they would charge him for this service;
2. \$100.00 for compensation to the landlord for attending the rental unit to let the tenant into the rental unit when he locked his key in the unit. The landlord testified that it is not possible to lock oneself out of the unit without the key. The landlord also testified she did not inform the tenant there would be such a charge; and
3. \$200.00 resulting from the tenant's inappropriate discarding of garbage on the strata property that resulted in the landlord getting a warning letter dated August 31, 2011 indicating that if the problem continued she would be fined \$200.00. The tenant confirmed she has not been fined as of today's date.

Analysis

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

From the testimony provided in the hearing I find the landlord was provided with the tenant's forwarding address on January 17, 2012 and allowing for 5 days for delivery of mail, I find the landlord received the tenant's forwarding address on or before January 22, 2012. This meant the latest the landlord must apply to claim against the deposit was on February 7, 2012. The landlord applied on February 24, 2012 to claim against the security deposit.

For these reasons, I find the tenant is entitled to double the amount of the security deposit held at the end of the tenancy less the amount returned from the landlord on September 4, 2011.

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.

I accept by the agreement of both parties the tenant owes the landlord \$40.00 for the hydro bill.

In relation to the landlord's claim for carpet cleaning, as per the tenant's agreement that he should pay for carpet cleaning and Clause 60 of the tenancy agreement I find the tenant's failure to have the carpets cleaned has resulted in the landlord suffering a loss that result from the tenant's violation of the tenancy agreement.

Despite the tenant's claim that he has found cheaper carpet cleaners and that because he was there less than a year, he should be charged less than the full price of cleaning I find the landlord has established the value of this loss by the provision of her receipt for carpet cleaning into evidence.

The tenancy agreement provided no reduction in the amount of professional carpet cleaning based on the duration of the tenancy other than it must be done annually and at the end of the tenancy. Further if the tenant had arranged the professional carpet cleaning prior to requiring the landlord to do it herself he would have control over hiring a cheaper service provider, he cannot now say that he could have done it for cheaper.

Based on the testimony and photographic evidence of the items stored and on the lack of any credible reasons as to the costs for "hauling and storage" of the tenant's remaining possessions, I find the landlord has failed to establish that she has suffered any loss relating to either hauling or storage of any items.

Further as the amount is no different at this hearing than it was on September 4, 2011 when the landlord originally withheld this amount from the tenant I find the landlord has failed to establish the value of any potential loss. For these reasons, I dismiss this portion of the landlord's Application.

In relation to the landlord's claim for lost rental income from the tenant's breach of the fixed term tenancy agreement, I find the landlord has failed to establish this was a fixed term tenancy.

According to Section 1 of the *Act* a fixed term tenancy means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends and a periodic tenancy means a tenancy on a weekly, monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with the *Act*.

I find the language in Clause 7 of the tenancy agreement is vague and contradictory: first the tenancy is described as "a periodic tenancy" and then states it will continue "on a year-to-year basis until the Landlord or the Tenant terminates the tenancy." As there are terms that appear to say it is periodic and terms that appear to say it may be fixed term and there is no specified end date in the tenancy agreement I find the tenancy agreement does not constitute an enforceable fixed term as defined under Section 1 of the *Act*.

In addition, I do not accept the landlord's assertion that she did not receive the tenant's notice to end the tenancy in writing and I find the tenant gave appropriate notice in accordance with Clause 69 of the tenancy agreement and Section 45 of the *Act* and as such I find the landlord has not suffered a loss resulting from a violation of the *Act* or tenancy agreement. I therefore dismiss this portion of the landlord's Application.

I find the landlord's claim for compensation for assisting the tenant with obtaining and moving furniture in the amount of \$300.00 is outside the obligations of either party in the tenancy agreement and as such has not resulted from a breach of the *Act*, regulation or tenancy agreement and I dismiss this portion of the landlord's Application.

As the landlord did not inform the tenant about a potential charge for her assisting the tenant to unlock the rental unit at any time during or since the tenancy, I find the landlord cannot now demand payment for such a service and I therefore dismiss this portion of the landlord's Application.

While I accept the tenant caused the landlord to receive a warning letter regarding the inappropriate disposal of garbage in the strata complex, I find the landlord has not been fined by the strata council and she has therefore not suffered any loss as a result of a breach of the *Act*, regulation or tenancy agreement. I dismiss this portion of the landlord's Application.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$780.80** comprised of \$1,250.00 double the security deposit less \$250.00 already returned; \$40.00 hydro; and \$179.20 carpet cleaning. This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: April 16, 2012.

Residential Tenancy Branch