



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for damage to the rental unit; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's advocate raised an issue with jurisdiction; she referred to the rental unit's Mobile Home Park Rules and Regulations and cited the first paragraph which states; "Because the Park is located on Native Land, the Residential Tenancy Board has no jurisdiction".

This rule is rather broad; it fails to specify that provincial legislation cannot affect "use and occupation" on Native Land because it falls under the purview of Indian Lands, which is a federal legislation. The nature of the dispute before me does not affect use and occupancy; the tenancy has ended and it involves a monetary claim by the landlord for loss of rental income and damages. I find that since it does not affect the use and occupation, it does not impair my ability to hear this matter and I find that the Residential Tenancy Act does have jurisdiction.

The tenant's advocate also pointed out to a Park regulation that prohibits owners from renting out their homes. The landlord countered that this rule had changed. Regardless of the state of compliance with a Park regulation, the parties did enter into a tenancy agreement and this regulation does not preclude jurisdiction of the Act.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a manufactured home. Pursuant to a written agreement, the fixed term tenancy started on October 1, 2011 and was to end on March 31, 2012. The rent was \$1090.00 per month and the tenant paid a security deposit of \$545.00.

The documentary submissions confirmed that the parties are at complete odds, and that there was an ongoing conflict mixed with a certain degree of underlying animosity. Therefore I will address the salient portion of the dispute and the evidence as follows:

The landlord testified that on December 30th, 2011, she received the tenant's notice to end tenancy effective January 31st, 2012. She stated that she did not agree, nor accept to end the tenancy before the end of its term. She said that she advertised immediately, and that she found new tenants for April 1st, 2012. The landlord is claiming the loss of rental income for February and March 2012.

The tenant testified that the landlord signed a mutual agreement to end tenancy, but that the landlord later changed her mind. In her documentary evidence, the tenant provided a copy of the agreement; however that copy was not signed by the landlord, and the tenant stated that she failed to make a photocopy of the signed version. The

landlord argued that she never signed the form in question. The tenant played a taped phone recording of the landlord's message left to the tenant in December 2011, addressing ants in the house, a sewer condition, and the landlord's statement that if the tenant wants to end the tenancy early, she has to give her notice for the 1st of the month. The tenant said that she believed on that statement that the 1st of the month meant January 1st, and that she could leave early. The landlord stated that she meant the 1st of March, which is the end of the fixed term. In her documentary evidence, the landlord referred to a December 31st, 2011 letter to the tenant, wherein she states that in spite of the tenant's notice to end the tenancy early, the landlord at no time discharges the tenant's responsibility concerning the fixed term agreement.

Concerning the damages, the landlord testified that walk-through inspections were done with the tenant at the start and the end of tenancy. However the landlord stated that she did not have condition inspection reports during the inspections; she said that she completed them later, and that she submitted them to the tenant with her package of evidence.

The landlord said that the tenant was extremely demanding and overbearing throughout the tenancy. She said that keys to the front door were never returned and that it had to be re-keyed. She stated that the carpets had to be professionally cleaned; that there was a cigarette burn and urine stains from the tenant's pet. She also addressed dents and scratches to an outside door; a twisted or bent mailbox; a bent sliding mirror, and small enamel chips on the stove top.

The landlord submitted a monetary claim as follows:

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| - Oven repair: | \$ 72.79 |
| - Broiler pan: | \$ 33.54 |
| - Re-key home: | \$ 128.80 |
| - Mailing fees: | \$ 17.72 |
| - Yard clean up: | \$ 45.00 |

- Stove delivery:	\$ 50.00
- Carpet shampoo:	\$ 78.40
- Miscellaneous damages:	\$ 125.00
- Loss of rental income:	\$2180.00
- Filing fee:	\$ 50.00
- Total:	\$2781.25

In her documentary evidence, the landlord provided 59 photographs in support of her claim for damages, showing in part, but not limited to; damages to the walls and around electrical outlets; small chips on the stove top; stained carpets; personal items left behind; ant traps; damaged door handles; and debris throughout the yard. She stated that the stove hinges were pried with such force that they needed to be replaced. She also stated that the yard needed clean-up from debris and garbage left behind.

The landlord's testimony concerning the photographs was unclear. It was first believed that all photographs were taken after the tenant left. The landlord then clarified that some were taken on January 30th, 2012, some of the 31st, some a month prior, but that all photographs of the yard were taken on or about February 7th, 2012.

The tenant testified that she thoroughly cleaned the property on January 30th and 31st, 2012. In her documentary evidence, she provided a cleaning receipt which included carpet cleaning. She stated that the carpet burn was pre-existent, and pointed out that she only received the condition inspection reports with the landlord's package of evidence and that she did not sign them. She stated that she was never given a key to the front door; that she informed the landlord that the problem with the stove door just happened on January 30th, 2012; and that the yard was left immaculate. She pointed out that the landlord's photographs of the carpet stains are close-up, and that the ones taken after cleaning are panoramic. She stated that she did not cause any of the damages alleged by the landlord.

S.K., witness for the landlord, testified that she was not present when the landlord took the photographs of the yard, and that she did not look at the yard when she was with the landlord on January 31st, 2012. She stated that she was also with the landlord on January 30th, 2012, during an initial walk-through without the tenant, and that the landlord took a few pictures. She stated that on the 31st, the landlord identified issues with the tenant, but that she did not look at the yard. The landlord asked the witness about the condition of the carpets; S.K stated that she observed a cigarette burn and the stains, and a heat register partially torn off the wall. She then stated that she saw some litter at the end of the driveway. She said that she saw the open stove door, and that it would not close, and confirmed that the landlord did not accept the tenant's notice to end tenancy.

In her documentary evidence, the tenant provided 10 photographs to support her testimony that she was not given a front door key, that there was already debris outside the property at the start of the tenancy, and that the tenant had to deal with ant infestation.

Analysis

The evidence established that the tenant left two months prior to the end of the fixed term. If the tenant relied on a telephone message to believe that the landlord was in agreement, then the landlord's December 31st, 2011 letter should have alerted the tenant to contact the landlord and seek clarification. The tenant's documentary evidence addressed a number of issues with the house. A remedy for the tenant would have been to seek assistance through the Residential Tenancy Branch and to make an application for dispute resolution, if the landlord fails to attend and resolve the issues. In this case the tenant took it upon herself to end the tenancy, and she did so prematurely. Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. I find that the tenant did not comply with the Act and broke the agreement by leaving 2

months early. The landlord took steps to re-rent the unit, and could not find new tenants until April 1st, 2012. I find that the landlord is entitled to recover the loss of rental income for two months.

Concerning damages: before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not always met. In this matter that burden was on the landlord to prove her claim against the tenant.

Section 23(3), (4), and (5) of the Act places the onus to complete condition inspection reports on the landlord; that they must be signed by both parties; and that the landlord must give the tenant a copy of the report in accordance with the regulation. The landlord failed to comply with these statutory requirements, and only provided the tenant with a copy of the reports with her package of evidence concerning this dispute. Further, the landlord's testimony concerning the photographs was contradictory. Therefore I cannot be satisfied that the rental unit was in any better condition when the tenant moved in than when the tenant moved out. I find that the landlord has not established, on a balance of probabilities, the damages as claimed and I dismiss this aspect of the landlord's claim.

Other than the filing fee, there is no provision for a party to make a claim under the Act for litigation costs, mailing costs, or any other costs related to an application for dispute resolution.

Conclusion

The landlord established a claim of \$2180.00. I authorize the landlord to retain the tenant's \$545.00 security deposit for a balance owing of \$1635. Since the landlord was partially successful, I award the landlord partial recovery of the filing fee for \$25.00. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$1660.00.

This Order may be registered in the Small Claims Court and 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 04, 2012.

Residential Tenancy Branch