



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and authorization to retain the security deposit. The landlord identified two respondents in filing this application. One of the respondents appeared (referred to by initials JA) and he was assisted by his daughter during the hearing.

Preliminary and Procedural Matters

Although the application indicated two tenants, I noted that the tenancy agreement provided as evidence named only one tenant (referred to by initials GG). I heard from the parties that JA resided in the rental unit and GG was to be a guarantor who did not reside in the rental unit. Both parties were of the position that JA was the tenant.

Upon review of the documentation submitted as evidence I find the signature appearing on the tenancy agreement is consistent with the signature of JA as it appears on the application for tenancy, a tenant's notice to end tenancy, and condition inspection report. Other than an application for tenancy I do not see the signature of GG on any other documents or any other evidence of GG exercising the rights or obligations as a tenant.

I am satisfied that GG did not sign the tenancy agreement and I have no other evidence demonstrating that he was otherwise a tenant. However, I am satisfied JA had a tenancy with the landlord as evidence by him occupying the rental unit, paying rent to the landlord, giving notice to end tenancy, and participating in the condition inspections. Therefore, I have amended the application by excluding GG and herein refer to JA as the tenant.

On another procedural note, both parties agreed that the JA's name was misspelled on the application and it has been amended to reflect the correct spelling.

Both parties 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.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Is the landlord authorization to retain the security deposit?

Background and Evidence

The following information was undisputed:

- The tenancy commenced October 1, 2011
- A security deposit of \$600.00 was collected by the landlord;
- The monthly rent was \$1,200.00 payable on the 1st day of every month;
- The tenant placed a notice to end tenancy in the manager's mail slot in the evening of January 31, 2012 which the landlord received on February 1, 2012.
- The tenancy ended February 29, 2012;
- The tenant and the former manager participated in a move-in and move-out inspection together and condition inspection reports were prepared by the former manager.

Below I have summarized the landlord's claims and the tenant's responses to each of the claims.

Unpaid/loss of rent – March 2012

The landlord is seeking to recover loss of rent for the month of March 2012 in the amount of \$1,200.00 as it was not re-rented until March 31, 2012. The landlord provided evidence as to advertising efforts made to re-rent the unit and a copy of the tenancy agreement entered into by the subsequent tenants.

The tenant was of the position his notice to end tenancy dated January 31, 2012 was sufficient to end the tenancy effective February 29, 2012.

Suite cleaning - \$75.00

The landlord submitted that the fridge, stove, sink and bathroom required additional cleaning. The landlord provided photographs of the rental unit taken after the move-out inspection took place.

The tenant was of the position that he cleaned the rental unit to the satisfaction of the manager at the time although some additional cleaning may have been required. The tenant submitted that the landlord's photographs are time stamped at 11:00 a.m. which demonstrates that the landlord's photographs were taken before the move-out inspection was performed. The tenant submitted that the move-out inspection took place at approximately 2:00 p.m. He recalls the time because he had been out for lunch before the inspection.

Window Cover cleaning – \$80.00

The landlord submitted that pursuant to section 23 of the tenancy agreement the tenant is required to have the draperies professionally cleaned at the end of the tenancy if they are professionally cleaned at the beginning of the tenancy. The landlord could not provide documentary support for the \$80.00 claimed as the former manager took the paperwork with her/him.

The tenant acknowledged that he did not professionally clean the draperies as the tenancy was only 3 months in duration.

Drywall repair - \$40.00

The landlord submitted that the door chain was pulled from the wall, necessitating a drywall repair. The move-in inspection report shows that the unit was freshly painted so there would have been no pre-existing damage.

The tenant submitted that the drywall damage existed at the beginning of the tenancy and that he had asked the former manager to have this repaired but it never was.

Documentary evidence provided by the landlord includes the tenancy agreement; application for tenancy; condition inspection reports; photographs; advertising for the unit; and, a tenancy agreement for the incoming tenants.

The landlord pointed out that the tenant has authorized deductions from his security deposit in signing in the appropriate space on the move-out inspection report. The tenant submitted that those amounts did not appear there when he signed it. The tenant also pointed out that the move-out inspection report was altered after it was

signed because his forwarding address was added in after he called it in to the manager.

The landlord submitted that tenants are provided one of the three copies made at the time an inspection report is completed. The tenant submitted that he did not receive a copy of the move-out inspection report until it arrived with the landlord's evidence package.

Analysis

Upon consideration of all of the evidence before me, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

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.

In this case, the landlord bears the burden to prove its claims against the tenant, on the balance of probabilities.

Unpaid rent – \$1,200.00

Given the written tenancy agreement presented to me names another person as the tenant but was signed by the tenant appearing before me, I find the written tenancy agreement presented into evidence is critically flawed. Accordingly, I find that I cannot rely upon it as evidence that those terms appearing in the agreement are the terms agreed upon by the parties before me. That being said, I have held the tenant responsible for compensating the landlord based upon the tenant's obligations under the Act.

Having found the written tenancy agreement unreliable I find insufficient documentary evidence that a fixed term tenancy was in place. Accordingly, I find the tenant not obligated to fulfill obligations under a fixed term tenancy. In the absence of a fixed term

tenancy I find that there was a periodic (ie: month-to-month) tenancy in place and this finding is consistent with the tenant's action in attempting to give a month's notice to end the tenancy.

The minimum amount of notice a tenant may give to a landlord to end a month-to-month tenancy is one full month of written notice. Where a person delivers a document by way of a mail box or mail slot, the Act deems the document received by the other party three days later. In this case, the tenant claims he placed his notice in the mail slot on January 31, 2012 and I accept his submission. However, the tenant does not have evidence to contradict the landlord's submission that the notice was received the following day, on February 1, 2012. Therefore, I find the landlord was in receipt of the tenant's notice on February 1, 2012 as opposed to the deeming provision which would give the landlord until February 3, 2012 to receive it.

Receiving a notice to end tenancy on February 1, 2012 is insufficient to end the tenancy February 29, 2012 as this is less than one full month of notice.

The landlord has provided documentation showing the landlord took reasonable steps to advertise the rental unit after receiving the tenant's notice. Therefore, I find the landlord entitled to recover loss of rent for the month of March 2012 from the tenant due to insufficient notice to end tenancy.

Cleaning and damage

Upon review of the landlord's photographs it is apparent that additional cleaning was required for the fridge, stove and sink. However, the tenant points out that the photographs were taken at 11:00 a.m., as evidenced by the time stamp on the photographs. The tenant submitted that the inspection took place at 2:00 p.m. and the unit was sufficiently cleaned by the time the inspection took place.

Upon review of the move-out inspection report, I cannot determine at which time the inspection took place. Nor is there documentary evidence such as a Notice of Inspection indicating the date and time the move-out inspection was scheduled to take place. Essentially, I was provided disputed verbal testimony as to when the inspection took place and the landlord's agent who completed inspection was not at the hearing to provide testimony. Therefore, I accept the tenant's testimony that the inspection took place at 2:00 p.m. and I find it reasonable that the tenant cleaned after the photographs were taken.

Upon review of the move-out inspection report, I accept the tenant's position that the report was altered after he signed it. It is clear that the tenant's forwarding address was

altered after the inspection report was signed as evidenced by the notation "call for new address" which is consistent with the tenant's testimony that he called the manager after the inspection was completed.

Altering a document after it is signed calls into question the integrity of the entire document and, in this case, the manager who participated in the inspection was not at the hearing to contract the tenant's statements as to the condition of the unit when the inspection took place. Therefore, I find I cannot rely upon the move-out inspection report as evidence of the condition of the unit at the end of the tenancy.

For the reasons given above, I find the landlord has not established that the rental unit required additional cleaning after the tenancy ended and this portion of the landlord's claim is dismissed.

With respect to drapery cleaning, the landlord did not provide photographs or other evidence to demonstrate the drapery needed cleaning or was cleaned after the tenancy ended. Therefore, this portion of the landlord's claim is dismissed.

With respect to the drywall damage it was undisputed that the drywall was damaged at the end of the tenancy. The issue raised is that the damage was present at the beginning of the tenancy. I find the move-in portion of the inspection report was not called into question and I have relied upon it in accepting that the walls were undamaged at the beginning of the tenancy. I find the tenant did not provide sufficient evidence that the subsequent damage was reported to the landlord. Therefore, I find on the balance of probabilities, that the tenant is responsible for damaging the drywall. I find the landlords' claim for \$40.00 to repair the drywall to be reasonable and I award this amount to the landlord.

Monetary Order

As the landlord was largely successful in this application I award the filing fee to the landlord. The landlord is also authorized to retain the security deposit in partial satisfaction of the amounts awarded to the landlord. The landlord is provided a Monetary Order calculated as follows:

Unpaid/loss of rent – March 2012	\$1,200.00
Drywall damage	40.00
Filing fee	50.00
Less: security deposit	<u>(600.00)</u>
Monetary Order	\$ 690.00

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an order of that court.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$690.00 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: May 25, 2012.

Residential Tenancy Branch