



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fees from the tenant for the cost of this application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for a monetary order for return of double the amount of the pet damage deposit or security deposit.

The landlord and the tenant attended the conference call hearing. Both parties gave affirmed testimony and provided evidence in advance of the hearing to the Residential Tenancy Branch and each other. The parties were given the opportunity to cross examine each other on the testimony given and evidence provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to return of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that a verbal agreement was made between them on November 15, 2011 for a tenancy to begin on December 1, 2011. Rent in the amount of \$700.00 per month was agreed to be paid on the 1st day of each month. The landlord collected a security deposit from the tenant in the amount of \$350.00 which was returned to the tenant on March 18, 2012, and collected the first 2 months of rent. No written tenancy agreement was prepared.

The tenant testified that upon arriving at the rental unit on December 1, 2011 the previous tenant had not yet moved out. The landlord asked the tenant if the previous tenant could have a few more days, and the tenant had to agree because the previous tenant had not yet moved. The landlord had made an agreement with the previous tenant that the landlord would keep the security deposit for over-holding, but did not offer the new tenant any compensation. The tenant testified that the previous tenant moved out on December 6 or 8, 2011.

The landlord was paid 2 month's rent, and when the tenant returned to the rental unit the rental unit contained mould in the kitchen and in the bathroom, the tenant found a cockroach in the living room, mouse droppings in the stove, the carpet in the bedroom was rotten, the baseboard heaters had been removed and space heaters remained in the rental unit for heat, and the driveway was not ploughed to allow for a moving truck. The tenant further testified that the landlord lives upstairs and uses propane heat so the sub-floor heating, controlled by the landlord was not in use. The rental unit was not ready for a new tenant, and the tenant didn't move in.

The tenant further testified that the landlord had brought a truck to the tenant to move and told the tenant that the landlord would help the tenant move in on January 3, 2012, but the tenant did not move into the rental unit at all, but had a vehicle towed to the rental property which wasn't running.

The tenant provided the landlord with a forwarding address in writing on February 13, 2012 in a letter, a copy of which was provided for this hearing, and the tenant testified that it was sent to the landlord by registered mail. The tenant also provided a copy of the registered mail receipt containing that date.

The tenant claims double the amount of the security deposit and recovery of 2 months of rent paid to the landlord, as well as \$200.00 for towing expenses and \$50.00 for registered mail and paperwork processing, for a total of \$2,350.00.

The landlord testified that the previous tenant had asked for an extra 8 days before moving out but the landlord did not agree. The landlord told the previous tenant that if the new tenant agreed, the landlord wouldn't oppose it. No one ever brought to the landlord's attention that the new tenant had difficulties with getting moved in.

The landlord further testified to hiring someone to clean the rental unit, and provided a receipt dated December 10, 2011 as evidence. The tenant was "wishy washy" about moving in. The tenant had agreed to pay 20% of the utilities, and the landlord did agree to provide a truck for the tenant to use to move in if the tenant needed it. The tenant's truck wasn't running, so the tenant had it towed to the rental unit within the 1st week of December, 2011.

The landlord further testified that the tenant was holding onto the place and wasn't clear to the landlord about the condition of the rental unit. The landlord didn't know until receiving a letter requesting the security deposit that the tenant wasn't moving in. The landlord received that letter containing a forwarding address for the tenant on February 21, 2012. The landlord provided photographs of the rental unit and testified that they were taken on December 10, 2011. Also provided is an invoice in the amount of \$200.00 dated December 10, 2011 which states that the entire suite was sterilized and mould and other damaged material was removed on December 8, 2011 and the entire suite was re-calked and miscellaneous repairs were completed on December 9, 2011.

The landlord claims unpaid rent for the months of February and March, 2012 for no notice by the tenant, as well as \$272.00 for hydro. The landlord provided a copy of a hydro bill in the amount of \$545.26 which includes a late fee of \$.84 dated January 27, 2012. The bill states that the period it covers is from November 29, 2011 to January 26, 2012. The rental unit was re-rented for April 1, 2012. The landlord stated that probably within a week of knowing that the tenant hadn't and wasn't going to move in the landlord started to advertise the rental unit for rent. The advertisements were placed on Craigslist, a free internet advertising site, as well as putting up posters at the local cafe, bulletin boards in town and in the local newspaper about a week later.

At the conclusion of the testimony and cross examination, the landlord disconnected from the conference call hearing. No further testimony or submissions were heard after that point in the hearing.

The landlord claims rent for the months of February and March, 2012, an order permitting the landlord to keep the security deposit for the tenant's failure to provide notice to vacate the rental unit, \$272.63 for half of the hydro bill for December, 2011 and January, 2012, for a total of \$2,022.63.

Analysis

In this case, both parties are claiming a monetary order from the other. It is up to each of the parties to prove the claims.

- Is the landlord entitled to a monetary order for unpaid rent or utilities?

It is clear in the evidence that the tenant did not move into the rental unit, however it is disputed by the landlord that the previous tenant was permitted by the landlord to stay in the rental unit beyond the date the new tenant was to move in. The evidence before me is that the parties had a verbal agreement for a tenancy to begin on December 1, 2011. The landlord claims the two tenants made the arrangement for a later date, and the tenant testified that the tenant had no choice but to agree because the previous tenant was still in the rental unit. Regardless of who made the agreement with the previous tenant, I find that the rental unit was not ready for the tenant until December 11, 2011. The landlord has provided photographs of the rental unit which were taken on December 10, 2011, which is after the date the tenant was to move in and after the date the previous tenant moved out. Further, the invoice for cleaning provided by the landlord states that the work commenced on December 8, 2011. The rental unit was not as the landlord's photographs depict until December 10, 2011. Therefore, I find that the tenant made a contract with the landlord for a tenancy that could not begin prior to December 11, 2011. The tenant is liable for rent for the month of December, less 10 days, or $\$700.00/31 \times 21 = \474.19 .

The landlord testified that the tenant did not make clear intentions of not moving into the rental unit. The *Act* requires a tenant to give one month's written notice to vacate a rental unit. The tenant did not give the landlord written notice. The undisputed testimony of the landlord is that the landlord did not know that the tenant was not moving into the rental unit until February 21, 2012 when the tenant's forwarding address was received. I find that the landlord took that as notice of the tenant's intention to vacate the rental unit, which could not take effect until March 31, 2012 according to the *Act*, and therefore, I find that the landlord is entitled to rent for the months of February and March, 2012.

The landlord's claim also includes half of the hydro for December, 2011 and January, 2012, but the landlord testified that the parties had agreed that the tenant would pay 20%. The tenant never resided in the rental unit and therefore used no utilities. The landlord has not established that any heat or other utilities were used in the rental unit, and therefore, I find that the tenant is not responsible for that claim.

- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

In order for a landlord to receive an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, the landlord must provide evidence that the tenant owes that much money to the landlord. Any amount of the deposits that is ordered in favour of the landlord is set off from any monetary order made to the landlord. Therefore, the landlord's application to keep the security deposit can only be awarded if I find that the tenant owes the landlord money, and if so, I will order the landlord to keep the security deposit in full or partial satisfaction of the landlord's claim.

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

With respect to the tenant's claim for return of rent paid to the landlord, the onus is on the tenant to prove that the rental unit was not inhabitable at the commencement of the tenancy, and having found that the rental unit was inhabitable by December 11, 2011 the tenant is only entitled to recover 10 days rent for the month of December, 2011, calculated as follows: $\$700.00 - 474.19 = \225.81 .

With respect to the tenant's claim for towing expenses, I find that the tenant has failed to establish any entitlement for that service as against the landlord, and the application must be dismissed.

With respect to the tenant's claim for registered mail and processing paperwork, the *Act* does not authorize the recovery of those expenses, and therefore, the application must be dismissed.

- Is the tenant entitled to return of all or part or double the amount of the pet damage deposit or security deposit?

With respect to the tenant's application for return of all or part of the pet damage deposit or security deposit, the parties testified that the landlord returned all of the security deposit to the tenant on March 18, 2012. The tenant sent the landlord a letter requesting the security deposit which also contained the tenant's forwarding address on February 13, 2012 by registered mail. The landlord testified to receiving it on February 21, 2012. The landlord filed the application for dispute resolution claiming against the security deposit on March 22, 2012, which is also in excess of 15 days. Therefore, I must find that the tenant is entitled to double recovery of the security deposit, or another \$350.00.

In summary, I find that the tenant has established a claim in the amount of \$350.00 for return of double the amount of the security deposit and \$225.81 for recovery of rent for December, 2011. The landlord has established a claim in the amount of \$1,400.00 for unpaid rent. The *Act* also permits me to set off one award from the other, and I order that the tenant pay the landlord the difference in the amount of \$824.19.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee for the cost of the applications.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$824.19.

This order is final and binding on the parties and may be enforced.

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*.

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 18, 2012.

Residential Tenancy Branch