



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for damage to the unit, site or property;
2. For a monetary order for unpaid rent;
3. To keep all or part of the pet deposit or security deposit; and
4. For a money owed or compensation for damage or loss under the Act.

The tenant's application is seeking orders as follows:

1. The return of double the security deposit and pet deposit.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, the tenant (AT) did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue

On April 30, 2012, the hearing was adjourned to amend the landlord's application at the request of the tenants to add additional respondents. The landlord was also to provide each tenant with a copy of the evidence submitted for this hearing. On May 28, 2012, at the hearing the tenants had not received the landlord's documentary evidence. Therefore, the landlord's documentary evidence is not admissible at this hearing. This hearing will be based on the oral testimony of the parties.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for damages to the rental unit?
Is the landlord entitled to a monetary order for money owed or compensation for loss under the Act?
Is the landlord entitled to keep all or part of the security deposit?
Are the tenants entitled to the return of the security deposit?

Background and Evidence

The tenancy began in June 2008. Rent was \$2,200.00 per month and during the course of the tenancy was reduced to \$2,000.00 payable on the first of each month. A security deposit of \$1,100.00 and a pet deposit of \$600.00 were paid.

Counsel for the tenant (LE) argued that this is a tenant in common relationship and not a co-tenancy. Counsel stated the landlord originally rented to four tenants, when one tenant moved out of the unit, the landlord had another tenant move-in and created separate tenancy agreements with each tenant and each tenant was responsible for paying their own rent.

The landlord testified that the tenants were jointly responsible to ensure rent was paid, however, he did accept the rent directly from each tenant as a convenience to the tenants.

The landlord testified he never entered into separate agreements with these tenants. The landlord stated when one tenant moved out of the rental unit, the other tenants found a new tenant to share rent, which he was agreeable to have that person as a co-tenant.

The landlord testified that the tenants were experiencing difficulties paying rent in full and he provided them with a rent reduction in exchange for them to maintain the lawn. The landlord further stated the tenants only paid one security deposit.

The tenant (KF) testified when he moved into the rental unit he paid his share of the rent directly to the landlord. The tenant (KF) stated he did not pay a security deposit as the other tenants had already paid the security deposit to the landlord.

Filed in the documentary evidence by the tenant (LE) is a letter dated April 23, 2012, from a former co-tenant its states "landlord began to develop individual agreements with tenant with regards to rent payment, and ultimately treated the tenants as separate renters" [reproduces as written]. It further states "we agreed to the take on the task of lawn maintenance in exchange for a reduction in rent, which we were granted" [reproduced as written]

The landlord claims as follows:

a.	Balance of rent for October 2011, November 2012	\$4,000.00
----	---	------------

	rent and half of December	
c.	Cleaning cost	\$ 750.00
d.	Carpet cleaning	\$ 490.00
e.	Damage to garage door (replacement)	\$ 728.00
f.	Replace appliance upstairs	\$ 168.00
g.	Filing fee	\$ 100.00
	Total claimed	\$7,236.00

Rent

The landlord testified that the tenants did not provide any written notice to end tenancy and the rental unit was still occupied in November 2011. The landlord stated the tenant (LE) told him that he was going out of town.

The landlord testified that the tenants owed a balance of \$1,000.00 for October 2011, rent and they did not pay any rent for November 2011.

The tenant (LE) testified that provided the landlord with verbal notice to end tenancy on September 29, 2012 and he paid his portion of October 2011, rent directly to the landlord.

Removal of garage

The landlord testified that when the tenants vacated the house they left a large amount of items, which included tires, couches, chairs, beds, personal clothing and all items in the kitchen. The landlord stated he paid \$550.00 for labour and \$450.00 for disposal. Attached to his application is a receipt.

The tenant (LE) testified that all his belongings were removed when he vacated the rental unit.

The tenant (KF) testified that he removed his belongings and that the tenant (LE) did leave behind some belongings which he also removed. The tenant (AT) was to remove everything else that was left behind.

The tenant (LE) testified that the tires were not their tires as they were left behind by the previous tenants and where there at the start of the tenancy.

Cleaning cost

The landlord testified after all the tenants' belongings were removed he was required to clean the entire unit, and it took eight hours to clean the upstairs and seven hours to clean the downstairs. The landlord is seeking compensation for cleaning in the amount of \$750.00.

Counsel for the tenant (LE) argues that the landlord evidence is inconsistent with his written email of November 24, 2011, as it states it took seven to clean the upstairs and five to clean the downstairs.

Carpet cleaning

The evidence of the landlord was the tenants did not steam clean the carpets at the end of the tenancy. The landlord is seeking the cost of \$490.00 paid to have the carpets cleaned. Attached to the landlord's application is a copy of the invoice for \$490.00.

The evidence of the tenant (LE) was that he had the upstairs carpets cleaned prior to him vacating the unit and he paid \$89.00.

Damage to garage door (replacement)

The landlord testified the tenants damaged the garage door by playing hockey in the driveway. The landlord stated it is estimated to cost \$728.00 to repair the door.

The tenant (KF) testified that the garage door was damaged when they moved into the unit. The tenant (KF) stated they always played hockey in the street.

The tenant (LE) testified the garage door was damaged prior to them moving into the unit.

Replace appliance upstairs

The evidence of the landlord was the stove was left so dirty and black at the end of tenancy that he found it easier to purchase a stove of the same age rather than to try and clean it. The landlord is seeking compensation in the amount of \$168.00.

The evidence of the tenant (LE) was the inside of the stove was black when they moved into the unit and that he tried to get the black off, but it would not come clean and they used the stove downstairs.

Tenant's Application

The tenant (LE) testified that he provided the landlord verbally with his forwarding address for the return of the security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Counsel for the tenant (LE) argued this is a tenant in common relationship.

Tenants in Common

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

In the absence of clear evidence of a tenancy in common, there is a presumption in law of a joint tenancy.

In this case, the landlord originally rented this house to four tenants, as one tenant moved out the other tenants would find a new tenant to move-in and share rent. The landlord accepted the new tenant as a co-tenant. The landlord did not make individual tenancy agreements with each new tenant and the tenants did not provide separate security deposits, as they relied on the original security deposit paid. The tenants also received the benefit of a rent reduction in exchange for them to maintain the lawn. The fact that each tenant paid their portion of rent to the landlord does not mean the landlord created separate agreements. The landlord accepted this method of payment as convenience for the tenants.

I do not find there is clear evidence to support the tenants (LE) position that this is a tenant in common relationship. Therefore, I find this was a co-tenancy.

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Rent

The evidence of the landlord was the tenants did not provide written notice to end tenancy and some of the tenants were still occupying the unit in November 2011.

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or a damage relating to the tenancy until the tenancy agreement has been legally ended.

The evidence of the landlord was the tenants did not pay all rent owed for October 2011 and did not pay any rent for November 2011.

The landlord is entitled to be compensated for the balance of rent owed for October 2011 and for the full month of November 2011. Therefore, I granted the landlord compensation for unpaid rent in the amount of **\$3,000.00**.

In this case, none of the tenants provided the landlord with written notice to end tenancy as required by the Act.

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The landlord is claiming loss revenue for December 2011, rent. As the tenant did not provide the landlord with thirty days written notice to end tenancy as required by the Act, The landlord is entitled to compensation. The landlord is seeking half a month's rent. I find this amount as reasonable due to the condition the rental unit was left in. Therefore, the landlord's claim for loss of revenue is granted in the amount of **\$1,000.00**.

Removal of garage

The evidence of the tenant (LE) was he had removed all his belongs for the rental unit. However, this was contradicted by the evidence of (KF). The evidence was the tenant (AT) was responsible for removing the remaining household items and failed to do so.

The evidence of the landlord was the tenants also left tires in the garage. The evidence of the tenant (LE) was the tires were left behind by the previous tenants.

In this case, I find the landlord had to remove and dispose a large amount of household items left by the tenants. However, in the absent of a move-in inspection to determine if the tire were left by a former tenant, I find I must accept the evidence of the tenant (LE) regarding that issue. Therefore, I will reduce the amount claimed for garbage removal by \$200.00 for the tires. The landlord is granted compensation in the amount of **\$800.00**.

Cleaning cost

In this case, I accept the landlord's evidence that a large amount of cleaning was done. As the landlord's email dated November 24, 2011, stated he spent twelve hours cleaning the premises, which is three hours less than his testimony. I will allow compensation for the twelve hours. However, the landlord is charging a rate of \$50.00 per hour which is a rate higher than I allow when the work is completed by the landlord. I will allow compensation at the rate of \$20.00 per hour. Therefore, the landlord is granted compensation for cleaning in the amount of **\$240.00**.

Carpet cleaning

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

The evidence of the tenant (LE) was the upstairs carpets were steamed cleaned prior to him vacating the unit. However, the tenant (LE) has not provided any documentary evidence to support his testimony. The evidence of the landlord was it cost \$490.00 to have the carpets steam cleaned in the house. The receipt attached to his application supports the landlord's claim. Therefore, I grant the landlord compensation for steam cleaning the carpets in the amount of **\$490.00**.

Damage to garage door (replacement)

The evidence of the tenant was the door was damaged when they moved into the unit. The landlord has not provided a copy of a move-in inspection to prove there was no damage to the garage door at the start of tenancy. Therefore, I find the landlord has provided insufficient evidence to prove the tenants caused damage to the garage door. As a result the landlord's claim for compensation for the garage door is dismissed.

Replace appliance upstairs

The landlord is claiming compensation for replacing a stove. The landlord replaced the stove with a stove of similar age. In this case, I find the landlord has provided insufficient evidence to prove the stove was damaged by the tenants as no move-in inspection was filed. Further, the landlord did not supply sufficient evidence as to the age of the stove. Therefore, the landlord's claim for compensation of the stove is dismissed.

Tenant's application

The tenant did not provide his forwarding address in writing. The landlord had the right to apply to retain the deposit where the tenants have failed to pay rent. Therefore, I find the tenant's application for the return of double the security deposit is dismissed.

I find that the landlord has established a total monetary claim of **\$5,630.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the deposit and interest of \$1,100.00 and the pet deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3,930.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord is granted a monetary order, and may retain the security deposit and pet deposit in partial satisfaction of the claim. The landlord is granted a monetary order for the balance due.

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: June 12, 2012.

Residential Tenancy Branch