



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; and, damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and 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. Have the landlords established an entitlement to compensation for damage to the rental unit?
2. Have the landlords established an entitlement to unpaid rent or loss of rent?

Background and Evidence

The following information was undisputed by the parties:

- The tenancy commenced November 24, 2011 and the tenant vacated the rental unit at the end of February 2012.
- The tenancy agreement provides that the tenant was required to pay rent of \$1,700.00 on the 1st day of every month for a fixed term set to expire May 30, 2012.
- At the beginning of the tenancy the landlord required and collected "first and last month's rent" and the tenant provided post dated cheques for the other months.
- The tenant's rent cheque for January 2012 was returned for insufficient funds and the tenant subsequently paid rent for January 2012.
- The landlord went to the tenant's bank with the tenant's February 2012 rent cheque and was informed that the funds were not available.
- On February 1, 2012 the landlord emailed the tenant and told the tenant consider the email an eviction notice and to let him know when he would be out.
- The tenant responded to the landlord via email on February 6, 2012 advising the landlord he would be out of the house at the end of February and that he would be applying the "extra month's rent" he paid to the month of February 2012.

- The landlord issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause which the tenant received February 9, 2012.
- The tenant did not file to dispute either of the Notices to End Tenancy.
- The parties participated in a move-in inspection and move-out inspection together.
- On the move-out inspection the landlord indicates the hardwood floor is dented beyond repair in the living room/dining room and the tenant indicates he disagrees with the landlord's assessment of the damage to the floor.
- The tenant applied for and was awarded return of double the security deposit on April 19, 2012 under file no. 787044.

The landlord is seeking to recover \$5,100.00 in unpaid rent and loss of rent for the months of February 2012; March 2012 and April 2012 and recognizes that May 2012 rent was already paid at the beginning of the tenancy. Upon enquiry of advertising efforts, the landlord named one free website and submitted that he began advertising in early March 2012 to either rent or sell the property. The landlord stated that he had a couple of interviews and then at the end of May 2012 the landlord employed a property management company to secure new tenants. The unit was re-rented June 15, 2012.

The landlord is also seeking to recover \$900.00 as compensation for damage to the hardwood floors. The landlord submitted that the hardwood floors were installed right before the tenancy commenced and at the end of the tenancy they were heavily scratched. The amount requested is an estimate to refinish the floors based upon the landlord's experience as a contractor. The floors have not yet been refinished as he planned to do it only if it was necessary but that it turned out to be unimportant to the new tenants.

The tenant responded to the landlords' claims as follows: Upon receiving the landlord's email of February 1, 2012 the tenant advised the landlord he would vacate the property at the end of February 2012 as it was obvious the tenancy relationship was not working out. The tenant also advised the landlord to apply "last months' rent" to February 2012. The landlord appeared pleased with the tenant's response and the relationship between the parties remained amicable until the end of February 2012. The tenant was of the position he does not owe any rent for February 2012. The tenant was of the position he does not owe rent for the remainder of the fixed term as the landlord issued eviction notices without merit. Although the tenant disagreed with the reasons indicated on Notices to End Tenancy he did not file to dispute the Notices to End Tenancy as he was leaving at the end of February 2012.

The tenant denied causing damage to the floors and attributed the scratches to normal wear and tear. The tenant asserts that the landlords' photographs are blown up images and the tenant referred me to his photographs. The tenant further points to the fact the new tenants did not have any issues with the condition of the flooring.

Analysis

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.

Considering all of the evidence presented to me I provide the following findings and reasons with respect to the landlords' claims against the tenant.

Unpaid rent/loss of rent

The Act requires a tenant to pay rent when due under the terms of their tenancy agreement. The Act does not permit a landlord to require rent before it is due. In this case, the landlord collected rent from the tenant before it was due. As the landlord was in possession of pre-paid rent, contrary to the Act, I find the tenant's instruction that he would apply the pre-paid rent to the month of February 2012 to be reasonable and meritorious. Therefore, I accept the tenant's position that he had paid rent for the month of February 2012 and this portion of the landlord's claim is dismissed.

As the landlord sought recovery of three months of rent with this application I have considered the request as it relates to the months of March, April, and May 2012 as this is the remainder of the fixed term tenancy. Below, I have analyzed the landlord's entitlement to loss of rent for the remainder of the fixed term tenancy.

Where a rental unit is available for rent for several months and the landlord is seeking to recover loss of rent for all of those months from the tenant the issue of mitigation

becomes paramount. In such cases, I find it reasonable to expect that the landlord would provide copies of at least some of the advertisements, receipts for advertising costs if applicable, or a schedule that would provide the following information: when advertising commenced, where advertising took place, the frequency of advertisements, the content of the advertisements, or the amount advertised as the rental rate at which times. The landlord did not provide any documentary evidence to demonstrate his advertising efforts. I find the landlord's lack of evidence and his brief verbal testimony with respect to advertising demonstrated that he was ill prepared to prove his efforts to mitigate rental losses.

Having heard the landlord was interested in selling the property and waited until the end of May 2012 to seek assistance from a professional to rent the property I has significant concerns as to the landlord's efforts to re-rent the property in a timely manner.

In the absence of proof of reasonable mitigation efforts I find the landlord has not established an entitlement to recover three months of rental loss from the tenant and I dismiss this portion of the landlord's claim.

Damaged flooring

The Act requires that a tenant leave a rental unit undamaged at the end of the tenancy. The Act provides that normal wear and tear is not damage for which a tenant is responsible. The tenant appears to acknowledge some scratches or marking of the hardwood floor but attributes it to normal wear and tear. I find the extent of the scratching and whether it was beyond normal wear and tear to be inconclusive upon reviewing the photographs supplied by both parties. However, I dismiss the landlord's claim for \$900.00 for damaged flooring on the basis the landlord did not verify or substantiate the value of the loss. I make this finding based upon the following factors:

- The landlord did not provide a calculation or some other measurable or comparable basis to explain how arrived at a value of \$900.00.
- Despite several months of vacancy the landlord did not repair or refinish the flooring, bringing into question whether the flooring was so damaged it required re-finishing.
- The landlords' new tenants indicated the condition of the flooring was not a concern to them which brings into question the landlord's position the flooring was so damaged it required refinishing.

Based upon the foregoing, I find the landlords have not met their burden to prove their claim as outlined in this decision and I have dismissed the landlords' application in its entirety.

Conclusion

The landlord's application has been dismissed in its entirety.

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: July 3, 2012.

Residential Tenancy Branch