



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDC

Landlord: MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement. The Landlord applied for a Monetary Order for unpaid rent, for compensation for lost rental income and for cleaning and repairs, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation and if so, how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on June 9, 2011 and was to expire on June 30, 2012. Rent was \$800.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$400.00 at the beginning of the tenancy.

The Tenant claimed that he made numerous verbal complaints to a succession of building managers during the first three months of his tenancy that his stove needed to be replaced and that he had insufficient hot water. The Tenant said the Landlord refused to deal with his requests so he withheld his rent for September 2011. The Parties agree that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on or about September 3, 2011 by the resident manager. The Tenant applied for dispute resolution to cancel this Notice and a hearing was scheduled for October 5, 2011. The Landlord did not attend that hearing. The Dispute Resolution Officer found that the Tenant had not properly served his hearing documents on the Landlord and dismissed the Tenant's application with leave to reapply.

The Tenant also claimed that when he returned from work on September 28, 2011, the Landlord had changed the locks on the rental unit door. The Tenant said he was advised by the Landlord's area manager that if he moved out the following day, he

would be allowed access to the rental unit to remove his belongings and would be relieved of having to pay rent for September 2011. The Tenant said he reluctantly agreed and moved into a motel for approximately a week until he could arrange other accommodations with a family member. The Tenant said the Landlord's agent, A.M., supervised him while he moved his belongings out of the rental unit and at no time asked him to participate in a move out inspection. The Tenant denied that there were any damages to the rental unit at the end of the tenancy.

The Landlord's agent, A.M., claimed that her first day of employment with the Landlord was October 27, 2011 and that the following day she received a call from the Landlord's head office advising her that the Tenant was moving out that day. The Landlord's agent, E.M., claimed that A.M. advised her on October 28, 2011 that the Tenant was moving out. A.M. said when she arrived at the rental property the Tenant was moving his belongings. A.M. said she noticed some broken items in the rental unit so she asked the Tenant if he wanted to do a move out inspection but he did not respond to her. A.M. said she approached the Tenant again a few hours later about doing an inspection and returning the keys but he just yelled at her. Consequently, A.M. said she completed the move out inspection on October 28, 2011 without the Tenant.

The Landlord's agents denied that the locks were changed on the Tenant while he was still living there and claimed that they were changed after he vacated because he did not return his keys (or a parkade remote). The Tenant admitted he did not return his keys but argued that it was of no consequence because they did not work on the new locks that the Landlord had already installed.

The Landlord's agent, E.M., claimed that the only reason the Landlord did not take steps to evict the Tenant for non-payment of September and October 2011 rent was because he had promised the area manager to pay up his arrears but failed to do so. The Landlord's agents denied any knowledge of the Tenant being asked to leave by the area manager and acknowledged that he was no longer employed by the Landlord. The Landlord's agents said the Tenant did not pay rent for September or October and the rental unit could not be re-rented until December 2011. The Landlord also sought to recover liquidated damages or a lease break fee of \$400.00.

The Landlord's agents claimed that according to their purchase orders (which were not submitted as evidence at the hearing) a new hot water tank was ordered for and installed in the rental unit at the beginning of the tenancy (which the Tenant denied). The Landlord's agents also claimed that there was no record that the Tenant had requested repairs to the stove and denied that it required repairs.

The Landlord's agent, A.M., claimed that the Tenant did not clean the rental unit at the end of the tenancy and therefore the Landlord incurred expenses for drape cleaning, carpet cleaning and general cleaning. A.M. also claimed that the Tenant damaged a wood panel above a mirror in the bathroom and that a wooden piece was missing above a kitchen cabinet. The Tenant argued that the panel in the bathroom was secured with clips and kept falling out throughout the tenancy. The Tenant denied any knowledge of

a broken wooden strip above the kitchen cabinets. The Tenant also denied that there were any drapes in the rental unit and claimed there were only blinds.

Analysis

The Tenant's application:

In this matter, the Tenant has the burden of proof and must show (on a balance of probabilities) that the Landlord ended the tenancy early and that he did not have a functioning stove or adequate hot water as he has alleged. This means that if the Tenant's evidence is contradicted by the Landlord, the Tenant will need to provide additional, corroborating evidence to satisfy the burden of proof.

The Tenant claimed that the tenancy ended on September 29, 2011 after the Landlord told him to leave and changed the locks on the rental unit. The Landlord's agents denied this and claimed that the tenancy ended on October 28, 2011 when the Tenant moved out without notice to them. The Tenant argued that his son was a witness to all of these matters and could have corroborated his evidence but that he was unavailable to give evidence at the hearing. The Tenant also argued that he did not have sufficient time to obtain a witness statement from his son prior to the hearing.

RTB Rule of Procedure #3 says that a Party must submit any documentary evidence upon which they intend to rely at the hearing at the time that they file their application for dispute resolution but in any event no later than 5 days prior to the hearing. RTB Rule of Procedure #11.9 says that a Party's witness must be available to give oral evidence at the time of the hearing. I find that the Tenant has had ample time to prepare for this hearing. The Tenant filed his application on July 27, 2012, several months after his tenancy ended. The Tenant also had almost an entire month after he filed his application to submit further documentary evidence and he did so, however it did not include any witness statements nor did he include any motel receipts that would also have been some corroborating evidence.

In any event, I find that the balance of the evidence suggests that the tenancy ended on October 28, 2011 as the Landlord claims rather than September 29, 2011 as the Tenant claimed. I am further persuaded that this is the case given that at the hearing of the Tenant's application for dispute resolution on October 5, 2011 to cancel the 10 Day Notice, the Tenant said nothing about the tenancy having ended. In the absence of any corroborating or supporting evidence from the Tenant, I also find that there is insufficient evidence to conclude that the Landlord ended the tenancy by locking him out of the rental unit. Consequently, I find that there is insufficient evidence to support the Tenant's application for compensation for motel expenses and it is dismissed without leave to reapply. The Landlord's agents also denied that there were any problems with the Tenant's stove or hot water tank. In the absence of any corroborating evidence from the Tenant to support this part of his application, I find that there is insufficient

evidence to prove his claim for compensation for loss of use of cooking facilities or hot water and it is dismissed without leave to reapply.

The Landlord's Application:

As indicated above, I find that the tenancy ended on October 28, 2011 when the Tenant moved out. I also find that the Tenant did not pay rent for September or October 2011 and that there is no evidence to support the Tenant's assertion that the Landlord agreed he did not have to pay rent for September. As a result, I find that the Landlord is entitled to recover unpaid rent in the amount of \$1,600.00. As is also indicated above, I find that there is insufficient evidence that the Landlord ended the tenancy by locking the Tenant out. Consequently, I find that the Tenant was potentially liable for any loss of rental income incurred by the Landlord up to the date the fixed term tenancy was supposed to end.

The Landlord's agents claimed that they received no notice from the Tenant that he was moving out at the end of October 2011 so they were unable to re-rent the rental unit for November 2011 and lost rental income for that month. Section 7(2) of the Act requires a Landlord to mitigate their losses by taking reasonable steps to re-rent the rental unit as soon as possible. The Landlord's agents provided no evidence of their efforts to try to re-rent the rental unit for all or part of November 2011 and as a result, that part of their application is dismissed without leave to reapply.

The Parties' tenancy agreement contains a term that says the Tenant will pay liquidated damages or a lease break fee of \$400.00 if he terminates the tenancy before the end of the lease term. As set out above (in the first paragraph), I find that there is insufficient evidence that the Landlord ended the tenancy by locking the Tenant out. Consequently, I find that the Tenant is responsible for liquidated damages in the amount of \$400.00.

Section 35 of the Act says that unless a tenant abandons a rental unit, a landlord must give a tenant two separate opportunities to complete a condition inspection report at the end of a tenancy. The second opportunity must be set out in writing on a form called "Notice of Final Opportunity to Schedule a Condition Inspection." The Landlord's agent, A.M., said she verbally offered the Tenant two opportunities on October 28, 2011 to participate in a move out inspection however he refused. The Tenant denied this and claimed that he was never offered an opportunity to complete a move out inspection report by A.M. Given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Landlord (who bears the onus of proof), I find that there is insufficient evidence that the Landlord complied with s. 35 of the Act by giving the Tenant any opportunity to participate in a move out inspection. Consequently, I give no weight to the move out condition inspection report completed in the Tenant's absence. Furthermore, I am not convinced that the inspection even took place that date given that two different dates appear on the documents, namely October 28, 2011 and November 28, 2011.

In support of its claim for cleaning and repair expenses, the Landlord provided a security deposit refund form setting out charges for various things. However, the Landlord provided no supporting documentation (ie. in the form of invoices, work orders, or receipts for example). In the absence of any reliable evidence about the cleanliness or state of repair of the rental unit at the end of the tenancy and in the absence of any supporting documentation of the alleged cleaning and repairs, the Landlord's claim for drape, carpet and general cleaning as well as for repairs and changing the locks is dismissed without leave to reapply.

The Tenant admitted that he did not return the remote access device to the Parkade to the Landlord at the end of the tenancy and therefore I award the Landlord \$50.00 for that part of its claim. I also find pursuant to s. 72(1) of the Act that the Landlord is entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. Consequently, I find that the Landlord is entitled to a total monetary award for \$2,100.00

I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$400.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$1,700.00.

Conclusion

The Tenant's application is dismissed without leave to reapply. A Monetary Order in the amount of \$1,700.00 has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 30, 2012.

Residential Tenancy Branch