



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 by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord and the tenant attended the conference call hearing on the first day scheduled, during which it was determined that the landlord had not served the tenant with a copy of any of the evidence the landlord wished to rely on. The parties agreed to adjourn the hearing to allow the landlord to provide the tenant with the evidence, and to provide the tenant with an opportunity to review the landlord's evidence and provide evidence to the landlord and to the Residential Tenancy Branch. The parties were ordered to exchange all evidence that they wished to rely on at least 5 days before the hearing, which days are not to include the date the evidence is exchanged, the hearing date, or weekends or statutory holidays.

Also, it was determined during the first day of the hearing that the tenant's room-mate had been successful with an application for dispute resolution at a hearing on May 10, 2012 wherein the landlord's husband was ordered to pay to the tenant's room-mate double the amount of the pet damage deposit or security deposit, and the parties agree that the deposit ordered to be returned is the same security deposit claimed by the landlord in this application. The parties were explained that I cannot deal with the landlord's application to keep the security deposit because it has already been dealt with, and the landlord's application to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the landlord's monetary claim for this dispute is hereby dismissed without leave to reapply.

The parties appeared before me again, gave affirmed testimony and the landlord provided evidence in advance of the hearing to the Residential Tenancy Branch and to the tenant. The tenant agreed that all evidence of the landlord, with the exception of a painting invoice was provided to the tenant. No evidentiary material was provided by

the tenant. The landlord also called one witness who gave affirmed testimony. The parties were also given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The landlord testified that this tenancy began on May 1, 2010 and was to be a fixed term for one year, although an error on the tenancy agreement stated that the fixed term expired on May 1, 2010. The landlord noticed that the tenant had vacated the rental unit on January 25, 2012, and the landlord did not receive any notice that the tenant intended to vacate prior to that date.

Rent in the amount of \$1,600.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$800.00 as well as a pet damage deposit in the amount of \$200.00, which has been dealt with by way of a previous dispute resolution hearing.

The landlord further testified that \$250.00 was paid to remove “junk” from the rental unit after the tenant had vacated, and provided a copy of a receipt for that service. That included unused wood from the tenant’s carpentry business, garbage and 4 mattresses. The landlord also claims \$150.00 for cleaning the rental unit, however no receipt or proof of that payment has been provided.

The landlord also testified that the tenant had left many holes and scratches in the walls of the rental unit rendering it in need of repainting, and provided an invoice in the amount of \$1,600.00, which states that the description of work was painting unit #306, being 800 square feet at \$2.00 per square foot. The tenant had denied receiving a copy of this invoice.

A copy of a move-in condition inspection report dated May 1, 2010 was provided by the landlord, but the form has not been completed room by room. It states on each page, “Everything brand new – Good.” When questioned, the landlord stated that the landlord

had never lived in the rental unit, but a previous tenant had. No move-out condition inspection report was completed.

The landlord also provided 22 photographs to depict the condition of the rental unit after the tenant had vacated. The landlord testified that the tenant was often late with the rent and a number of rent cheques had been returned N.S.F. during the tenancy, and provided numerous cheques to substantiate that testimony.

The landlord claims one month's rent for the tenant's failure to provide written notice to vacate the rental unit, in the amount of \$1,600.00, as well as \$1,600.00 for painting, \$250.00 for "junk" removal, \$150.00 for cleaning, and recovery of the \$50.00 filing fee for the cost of this application.

The landlord's husband also testified, but merely stated that he had nothing to do with the rental unit and knew nothing except what was told to him by his wife.

The tenant testified to moving into apartment #402 on May 1, 2010 which is owned by the same landlord. The tenant then moved in October or November, 2010 to unit #306. The condition inspection report shows unit #306 and is dated May 1, 2010 and the signature of the tenant on that report is not that of the tenant, but a forgery.

The tenant further testified that unit #306 was in good condition, however contained water damage on the floor in the main living area and the bottom of the adjoining wall, and the landlord had told the tenant that it was from an aquarium belonging to the previous tenant.

The tenant also testified to verbally advising the landlord of the tenant's intention of moving out at the end of December, 2011. The landlord told the tenant to put it in writing, which he did and gave to the landlord prior to the end of November, 2011. The tenant also spoke with the landlord's husband who agreed with the tenant that the tenant could over-hold and pay \$104.00 per day for January 1 and 2. The parties were in constant contact, and the landlord was present while the tenant was moving out on January 1, 2012 for at least a half hour and had words with the tenant's girlfriend, sometimes heated.

The tenant further testified that the mattresses did not belong to him. The tenant only had a foam mattress which he rolled up to put in the dumpster, but the landlord's son told him it couldn't go in the dumpster and then helped the tenant put it on the roof of

the tenant's truck. The tenant had seen the other mattresses in the storage area, some of which were seen about 2 weeks prior, and then again on January 1, 2012. The storage area is close to the dumpster.

The tenant further testified that the garbage bag in the photograph provided by the landlord is in the common area, not the apartment that had been occupied by the tenant, and the garbage bag was not left there by the tenant.

The tenant also testified that the photograph of "junk" referred to by the landlord is in a storage area which the tenant rented for \$250.00 per month while he resided in unit #402. The storage room was given up about the time the tenant moved from unit #402 to unit #306.

The tenant further testified that the photographs provided by the landlord to show painting required are not photographs of the rental unit but of common areas. One of the photographs shows stairs, and there are no stairs in the rental unit. Further, one of the photographs shows a taupe color of walls, and none of the walls in the rental unit were that color. The landlord has been dishonest, and any marks on the walls in the common areas were not caused by the tenant but were already there prior to the tenant moving out of the rental unit. The tenant got a color-match from Rona and filled and painted picture holes in the rental unit prior to vacating.

The landlord was given an opportunity to re-but the testimony of the tenant, but claimed to not have a copy of the move-in condition inspection report before her. The only copy provided for this hearing was provided by the landlord. The landlord further denied that the tenant ever had a conversation with the landlord's husband, and that an agreement for \$104.00 per day for over-holding was not made.

Analysis

I have reviewed the move-in condition inspection report and compared the signature of the tenant to that on the cheques provided by the landlord, and I agree with the tenant that the signature differs. Further, the landlord did not dispute the testimony of the tenant, but confirmed that the tenant did not move into this rental unit until several months after the date of the move-in condition inspection report. I find that the landlord has failed to establish that a move-in condition inspection report was ever completed, or that it represents the condition of the rental unit when the tenant moved in.

The *Residential Tenancy Act* requires a landlord to complete a move-in and a move-out condition inspection report with the tenant present. If the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the security deposit has already been dealt with by way of dispute resolution, however the report, according to the regulations, is evidence of the condition of the rental unit. I also accept the undisputed testimony of the tenant that at least some of the photographs were not taken inside the rental unit. I find that the report and the photographs provided by the landlord cannot be relied upon.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, I find that the landlord has failed to establish elements 1 and 2.

With respect to the landlord's claim for one month's rent for the tenant's failure to give a month's notice prior to vacating the rental unit, I find that the landlord's husband's testimony of having no knowledge of anything except what was told to him by the landlord, is not helpful with respect to the merits of this matter. I find that the landlord has failed to establish that the tenant did not provide any notice, and I accept the testimony of the tenant that the landlord was present in the rental unit on January 1, 2012 and had full knowledge of the move.

Conclusion

For the reasons set out above, the landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the filing fee for the cost of this application.

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: September 10, 2012.

Residential Tenancy Branch