



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the unit, unpaid rent, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenant's agent stated that he was given the hearing documents approximately 3 weeks ago, after they had been sent to the tenant's mother's address. He has communicated with his son and was prepared to proceed.

The landlord stated that she wished to delay her application as she suffered a concussion on October 2, 2012, which barred her from fully preparing for this hearing. The landlord made a written submission requesting an adjournment, required as a result of a medical situation dating back to October 2, 2012. The landlord did not make any other written evidence submissions.

The application included a claim for loss of rent revenue, costs for agent fees and emergency plumbing costs incurred in July 2012. The landlord submitted a claim for very specific amounts and confirmed that she was given a bill for plumbing at the end of July 2012. I considered the landlord's submission that her October 2, 2012, injury somehow barred her from submitting her evidence with her application or, at least, within the time-frame required by the Act and determined that there was no evidence before me to support a request for an adjournment. I determined that the evidence in support of the claim for loss of rent revenue and plumbing could have been submitted at

the time the application was made and that an adjournment is an inappropriate response to a failure to fully prepare for a hearing.

The landlord chose to proceed with verbal testimony only; she did not indicate that she wished to withdraw her application. She was given the opportunity to reapply, but very clearly stated she wished to proceed on the basis of oral submissions.

The landlord indicated that she has further claims to make; she was told that any future application would be considered and decided by the dispute resolution officer assigned to hear the application.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue?

Is the landlord entitled to compensation for damage or loss under the Act and for damage to the rental unit?

Is the landlord entitled to retain the deposit paid by the tenant?

Background and Evidence

The landlord stated that a written tenancy agreement was signed; a copy was not supplied as evidence. The tenant's agent had a copy of the agreement and provided the following details from that agreement:

- this was a fixed-term agreement that commenced on June 1 2012;
- the fixed-term ended on July 31, 2012;
- at the end of the tenancy the tenant was to vacate the unit;
- that rent in the sum of \$3,495.00 was paid in advance, in full; and
- a deposit in the sum of \$1,747.50 was paid.

The landlord concurred with these terms.

The landlord stated that she had hired an agent, who signed separate tenancy agreements with the tenant and another individual. Each of the written tenancy agreements had the same terms; the 2 tenants moved into the unit on different dates. Each of the tenancy agreements required payment of \$3,495.00 per month; however during this hearing the landlord stated she only expected to receive a total of \$3,495.00 per month from the 2 tenants; not 2 payments each month, in the sum of \$3,495.00.

The landlord stated that a move-in condition inspection report was completed; the tenant's agent did not know whether a report had been completed or not.

The landlord said she asked the tenant to meet with her on the morning of July 31, 2012, to complete an inspection, but that when she went to the unit the tenants had moved out. The tenant had given the landlord a written address on July 30, 2012.

The landlord has made the following claim:

Loss of rent revenue August 2012	\$3,495.00
Cost of agent	1,001.28
Emergency plumbing cost	2,038.42
TOTAL	\$10,029.70

The application indicated a claim in the sum of \$10,000.00.

The landlord testified that on July 29, 2012 a flood occurred in the unit; neither tenant was at home. The landlord said that the toilet had been plugged with paper, which caused the flood. The landlord was unable to rent the unit and lost revenue as a result of the negligence of the tenant and damage caused by the flood.

On July 28, 2012 a plumber was called to the unit and the landlord was charged the costs of repairs. .

During the hearing the landlord repeatedly stated she continued to gather evidence and receipts and that the company working on the unit had not disclosed all costs to her and that she wanted to make a further claim for damages. Initially the landlord stated she did not have a record in support of the plumbing cost; then the landlord said that within several days of July 28, 2012 she had been given an invoice for the repair that was made. A copy of the invoice was not supplied as evidence.

The landlord had hired an agency to act on her behalf and she has claimed that cost; an invoice or proof of payment was not supplied.

The tenant's agent said that his son had confirmed that a flood had occurred in the unit while he was out for the evening. As soon as the landlord called him he went to the unit; he denied any responsibility for the flood.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the tenancy commenced on June 1, 2012, that it was a fixed-term until July 31, 2012, at which point the tenant was to vacate. There is no dispute that rent during the tenancy was paid in full and that the amount paid each month was \$3,495.00.

In relation to the loss of rent revenue claimed, in the absence of any evidence that the flood was caused by the negligence of the tenant, I find that the claim for loss of revenue is dismissed.

I have rejected the landlord's submission that she could not have supplied evidence in support of her claim, as the result of an October 2, 2012 accident. The landlord was able to participate in this hearing and did not wish to withdraw her application. I find that the landlord had ample opportunity at the time she made her application on August 14, 2012 to submit evidence that would have been available at that time. The landlord confirmed she was issued an invoice within several days of the July 28, 2012 repair but a copy of that invoice was not supplied.

The landlord claimed very specific amounts on her application. There was no reasonable explanation given as to why the landlord could not have submitted the evidence in support of the claim, when she has confirmed that an invoice for plumbing costs was issued. Further, the landlord supplied no evidence supporting her allegation that this tenant caused a flood. There was no dispute that a flood occurred; but I find, on the balance of probabilities, that the landlord has not proven the tenant caused the flood.

I considered the landlord's submission that she has not been able to obtain evidence and have rejected that stance, as the landlord provided no evidence of efforts made to obtain information from her insurer or the company who she says is making repairs. There was no reasonable explanation given to explain the absence of any evidence; the landlord did not even supply a copy of the tenancy agreement, which she acknowledged was in her possession.

The landlord has claimed \$1,001.28 for the cost of property management, to assist her in locating tenants. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to property management are not a result of a direct breach of the Act. This is a cost that the landlord chose to incur, rather than managing the property herself. As a result, this portion of the claim is denied and the landlord is at liberty to write it off as a business expense.

Residential Tenancy Branch policy suggests that when a landlord claims against a deposit any balance not owed to the landlord may be Ordered returned to the tenant. I find this to be a reasonable stance. As the landlord's application does not have merit I Order the landlord to return the deposit, in the sum of \$1,747.50 to the tenant, forthwith. I have issued the tenant a monetary Order in the sum of \$1,747.50 which is enforceable through Small Claims Court.

Conclusion

The portion of the application claiming agent fees is declined.

The balance of the application is dismissed.

The landlord is Ordered to return the deposit to the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 02, 2012.

Residential Tenancy Branch