



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant and her mother testified that the landlord gave the tenant an oral notice to end this tenancy on October 3, 2012. I advised the tenant that the *Act* requires landlords to give written notices to end tenancy on the approved Residential Tenancy Branch (RTB) forms. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on November 17, 2012. I am satisfied that the landlord served his hearing package to the tenant in accordance with the *Act*.

The parties confirmed that they had served most of their written evidence to one another in advance of this hearing. I advised the landlord that I would not consider his late written evidence from an individual who the landlord was proposing using as a witness because the landlord did not serve this written evidence to the tenant.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant entered into written evidence a signed copy of a Residential Tenancy Agreement between the parties for a tenancy in Unit 309 in one of the landlord's other rental buildings that commenced on August 1, 2011. Monthly rent for that periodic tenancy according to the written Agreement was set at \$730.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$365.00 security deposit paid on July 12, 2011 from that tenancy. The landlord also continues to hold the tenant's \$365.00 pet damage deposit from the initial tenancy, also paid on July 12, 2011.

The parties agreed that the tenant moved from Unit 309 in that building to Unit 315 in another of the landlord's rental buildings as of October 1, 2012. The tenant maintained that the parties agreed to this relocation because of problems with black mould in her previous rental unit in Unit 309. The parties agreed that the monthly rent remained \$730.00 at the new rental unit, the dispute address for this application.

The tenant entered into written evidence a copy of the inspection report she and her mother prepared at the time of her move from Unit 315.

The landlord did not dispute the tenant's claim that she physically moved from the rental unit by October 19, 2012. However, rather than providing the keys to the rental unit directly to the landlord, the tenant said that she dropped the keys into the property manager's mailbox. The landlord testified that he did not receive the tenant's keys and obtain vacant possession of the rental unit until October 29, 2012.

Both parties agreed that the tenant did not issue any written notice to end her tenancy in Unit #315. She said that she complied with the landlord's oral request to end her tenancy when the landlord refused to conduct a joint move-in condition inspection of this rental unit with her and refused to provide her with a proper signed copy of a new Residential Tenancy Agreement for Unit #315. The landlord testified that he let the tenant move into Unit #315 when she advised him that she did not want to remain in her previous rental unit in his other building.

The landlord's application for a monetary award of \$1,230.00 included a claim for \$730.00 in unpaid rent for November 2012, and a claim for \$500.00 for damage to the carpet in the common hallway that the landlord attributed to the tenant.

Analysis – Claim for Unpaid Rent

I have carefully considered the circumstances surrounding the tenant's move from one of the landlord's other rental buildings to Unit #315 in the rental building identified as the

disputed address in the landlord's application. Although a landlord is responsible for creating a written Residential Tenancy Agreement at the start of a new tenancy, there are many oral agreements entered into between landlords and tenants that still establish a legal tenancy under the *Act*. A landlord's refusal to conduct a joint move-in or move-out condition inspection affects the landlord's ability to claim against a security or pet damage deposit at the end of a tenancy. I find that neither of the landlord's above-noted omissions have an effect on the legality of the agreement entered into between the parties such that it enables a tenant to arbitrarily end a tenancy without following the requirements of the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for November 2012, the tenant would have needed to provide her notice to end this tenancy before October 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing.

I recognize the unusual circumstances of this tenancy where the tenant moved from one of the landlord's rental units in one building to a different rental unit in another of the landlord's buildings. Despite the landlord's application of the deposits from one tenancy to the new tenancy and the absence of a formal Residential Tenancy Agreement for the new tenancy, this still does not enable a tenant to end a tenancy without providing written notice to do so. As noted above, a landlord cannot end a tenancy on the basis of an oral request that a tenant leave a rental property. For these reasons, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

There is undisputed evidence that the tenant did not pay any rent for November 2012. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for November 2012. He gave undisputed sworn testimony that he advertised the availability of the rental unit for November 2012, shortly after he received the tenant's keys to the rental unit. He also gave undisputed sworn testimony that he had two or three showings of the rental unit in November 2012, the first on November 5, 2012, and the second on or about November 15, 2012. He testified that he was only successful in re-renting the premises for December 15, 2012, on December 13, 2012.

As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss for November 2012. For the above reasons, I find that the landlord is entitled to a monetary award of \$730.00 for unpaid rent arising out of the tenant's failure to provide proper notice of her intention to end this tenancy.

Analysis – Remainder of Landlord's Claim

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord testified that his claim for damage was not for the rental unit itself, but for damage to the carpet in the hallway leading to the tenant's rental unit. He did not provide any invoices or receipts to document that he had actually incurred losses arising from this tenancy and testified that he has not yet replaced or repaired the hallway carpet. As noted above, I was unable to consider the written evidence from another tenant as the landlord did not serve this evidence to the tenant/respondent in his application. Although the tenant in the other rental unit was available to provide sworn testimony, I declined to hear her testimony because the landlord testified that he has not incurred any actual losses with respect to his claim for damage arising out of this tenancy. For the above reasons, I dismiss the landlord's claim for a monetary award for damage to the carpet without leave to reapply.

The tenant testified that she left her forwarding address in writing for the landlord in the property manager's mailbox on October 26, 2012. The landlord said that he did not receive these documents until October 29, 2012, at which time he took possession of the rental unit. As I accept that the landlord applied the pet damage and security deposits from the previous tenancy to the short-term tenancy in Unit #315, I allow the landlord to retain the tenant's deposits plus applicable interest in satisfaction of the landlord's monetary award. No interest is payable over this period.

Given that the landlord has been only partially successful in his application, I allow the landlord to recover \$25.00 from his \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and a portion of his filing fee, and to retain the tenant's deposits:

Item	Amount
Unpaid November 2012 Rent	\$730.00
Less Security & Pet Damage Deposits	-730.00
Recovery of ½ Filing Fee for this application	25.00
Total Monetary Order	\$25.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the landlord's claim for damage arising out of this tenancy without leave to reapply.

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: December 19, 2012

Residential Tenancy Branch