



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, SS, O

Introduction

This hearing dealt with an application by the landlord for a monetary order, an order authorizing her to retain the security deposit in partial satisfaction of the claim and an order permitting her to serve documents substitutionally. Both parties participated in the conference call hearing.

At the hearing, the landlord advised that her daughter was available in another room to assist her if she felt it was necessary. The landlord did not during the hearing summon her daughter for assistance nor did she ask that her daughter called as a witness.

As the parties confirmed having received each others' evidence, the claim for an order permitting the landlord to serve documents substitutionally was not addressed.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Should the landlord be permitted to retain the security deposit?

Background and Evidence

The parties agreed that the tenancy began on June 1, 2012 and ended on September 30, 2012. They further agreed that monthly rent was set at \$1,500.00 per month and that the tenant paid a \$750.00 security deposit.

The landlord seeks to recover \$1,500.00 in unpaid rent for the month of September 2012 and \$3,000.00 as the cost of cleaning and performing repairs as well as \$50.00 which represents the cost of her filing fee.

The tenant testified that she left the landlord a cheque for \$750.00 for rent for September and told the landlord that she could retain the security deposit for the other half of the rent that was due. The landlord acknowledged having received and negotiated the cheque, but testified that she applied it toward a pet deposit which had not been paid.

The landlord testified that the tenant did not vacate the unit by noon on the last day of the tenancy as the landlord expected that she would and that she left a significant amount of furniture in the house after she vacated. Upon discovering the furniture, the landlord went door to door around the neighbourhood asking neighbours if they wanted the furniture. A neighbour offered assistance in moving the furniture to the front yard and several pieces were taken by neighbours. The landlord arranged for the furniture which was unwanted to be removed and taken to the landfill.

The tenant testified that she had understood that she did not have to vacate the unit until midnight on the last day of the tenancy and acknowledged that she left furniture in the unit, but stated that she had arranged for a neighbour to pick up the furniture on the day after the tenancy ended. By a happy coincidence, the landlord had contacted the very neighbour who had intended to claim the furniture.

The landlord claimed that at the end of the tenancy the toilet did not flush properly and that a sink was clogged, requiring a treatment with Drano. She further testified that the tenant had left a significant number of nail holes and marks in the walls. The landlord claimed that the tenant had failed to clean the rental unit and in particular had not cleaned the kitchen appliances or any part of the kitchen. She testified that the unit smelled of cat urine, that a light fixture was missing and the light did not work and that bedroom drapes were missing. The landlord stated that because the rental unit was not emptied and cleaned by 1:00 p.m. on the last day of the tenancy, the tenants who were to occupy the unit were delayed in moving in. The landlord stated that she intends to compensate the new occupants for the inconvenience, but cannot afford to do so.

The landlord provided a letter from the new occupants in which they stated that it was not until 10:30 p.m. on September 30 that the tenant advised that the premises was vacant. The new occupants wrote that when they entered the unit the following morning, the unit was unclean, there were "holes and nails in scuffed walls" and the unit had abandoned furniture in many rooms. The new occupants further stated that they painted the interior of the unit.

The tenant testified that she cleaned the unit before she vacated and that the toilet had never worked properly, the walls were not freshly painted when she moved in and already had marks thereon, and that the light fixture was not in place at the beginning of the tenancy and the light had never functioned properly. The tenant further testified that she had placed her own draperies in the home and had stored the landlord's drapes during her tenancy. When she reinstalled the drapes prior to vacating, she noticed the strong stench of cat urine. As her cats did not spray, she attributed this to previous tenants.

Analysis

I find that the tenant paid just \$750.00 of the rent owing in September. I find that this money must be applied to rent rather than to an outstanding pet deposit as the tenant did not specify that this money was to be applied to a pet deposit. Section 21 of the *Residential Tenancy Act* specifically prohibits tenants from using the security deposit as rent without the landlord's written consent. I find that the landlord is entitled to recover \$750.00 in unpaid rent and I award her that sum.

The landlord bears the burden of proving her claim on the balance of probabilities. Although I repeatedly asked the landlord for estimates of the time she spent performing repairs, she was unable to provide such estimates and she provided no invoices showing what monies were spent in remediation. Although the landlord claimed that the rental unit was unclean, she provided no photographs showing an unclean unit. The tenant's photographs show that the unit was clean, except for furniture which had been left behind.

The Act places an obligation on the landlord to conduct an inspection of the rental unit with the tenant at the beginning and at the end of the tenancy and to produce a written report of that inspection. The landlord failed to do so and as a result, there is no way for me to determine whether there was an odour of cat urine in the draperies, nails and marks on the walls and a broken light fixture at the beginning of the tenancy.

Section 37(1) of the Act provides that tenants must vacate a rental unit by 1:00 p.m. on the last day of the tenancy. I find that the tenant failed to vacate the unit at the time specified in the Act and that she left furniture in the unit which the landlord had to deal with. Although the landlord did not provide a time estimate or invoices showing the charges for removing some of the furniture to the landfill, I accept that there was some cost involved and I find that she should be compensated for her time. I award the landlord \$100.00 for the cost of removing furniture from the rental unit and disposing of it.

I dismiss the balance of the landlord's claim. The Act requires tenants to leave a rental unit reasonably clean. As is no condition inspection report and no photographs showing that the unit was not reasonably clean, I find that the landlord has not proven on the balance of probabilities that the tenant failed to adequately clean the unit. I further find that the landlord has failed to prove that the tenant caused any damage to the unit, the toilet, sink, light fixtures or draperies.

As the landlord has enjoyed very limited success, I find it appropriate to award her \$10.00 of the \$50.00 filing fee she paid to bring her application.

Conclusion

The landlord is awarded \$860.00. I order the landlord to retain the \$750.00 security deposit in partial satisfaction of the claim and I grant her a monetary order under section 67 for the balance of \$110.00. This order may be filed in the Small Claims Division of the Provincial Court 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: January 29, 2013

Residential Tenancy Branch

