



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent and utilities and damages totalling \$348.37 plus the \$50.00 cost of filing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for rental arrears and damages?

Background and Evidence

The tenancy began in June 2012 and ended in September 2012. The rent was \$700.00 and a security deposit of \$300.00 was paid.

The landlord testified that the tenant accrued rental arrears of \$210.00 for the months of August and September 2012. The landlord is also seeking \$93.37 for cleaning and damages and \$45.00 for garbage removal.

Submitted into evidence were photos, a copy of a receipt for cleaning supplies and the purchase of a carbon detector. No copies of the tenancy agreement or move-in and move-out condition inspection reports were in evidence.

The tenant did not dispute that the rent was owed, but disputed the remainder of the landlord's claim. The tenant testified that the invoice for the cleaning supplies was dated two weeks after she had already vacated and the tenant pointed out that the unit was filthy when she moved in and was left in a cleaner condition when she vacated.

The tenant testified that she had supplied her own carbon monoxide detector and should not be charged for the replacement detector purchased by the landlord. The tenant also pointed out that, although she left a mattress that had been ruined during her tenancy, none of the other garbage left on the premises was from her. The tenant argued that the landlord has not submitted any invoices or receipts for garbage removal.

The tenant stated that the landlord had failed to refund her security deposit within the required 15 days after she vacated leaving a note with her forwarding address in the suite, along with the keys on her last day of residency. The tenant testified that she also emailed a forwarding address to the landlord. The tenant stated that the address she provided as her forwarding address was the same as the dispute address because she had directed Canada Post to forward her mail.

The landlord testified that, after the tenancy ended, she did not find any note with the tenant's forwarding address in the rental unit. The landlord stated that she received the tenant's forwarding address in an email dated October 5, 2012. The landlord testified that she did not consider the address given by the tenant to be a proper service address because it was the same address as the rental unit that was being vacated.

The landlord stated that she believed that she would not be able to send the security deposit to that address or use the former address for service of documents.

Analysis

Forwarding Address

In regard to the return of the security deposit, I find that the Act states a landlord can keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and obtains an order to retain the amount. The landlord must either make the application or refund the security deposit within 15 days after the tenancy had ended and the receipt of a written forwarding address. Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In regard to the tenant's position that the landlord failed to return the deposit within the required 15 days, I find that this is based on the tenant's position that the landlord was furnished with her address as of the end of September 2012, through a note left in the rental unit for the landlord to find.

On the question of whether or not this was a valid method of service, I find that section 88 of the Act lists the different ways that documents can be served. Section 88(1) (g) of the Act permits service,

“by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;” (my emphasis)

I find that merely leaving a note in the unit is not necessarily adequate service under the Act. Moreover, the landlord denied that such a note was ever found. I find that the tenant and the tenant's witness only gave disputed verbal testimony about the existence of this note, and no copy of the note was submitted into evidence.

I accept the landlord's testimony that she received the tenant's forwarding address by email notification on October 5, 2012.

I find that the Act does not specifically recognize email as a method of service. However, in this case, where both parties communicate through email during the tenancy and when both acknowledge the email correspondence, I accept that the landlord was validly served with a written forwarding address.

Given that the landlord's application was submitted on October 25, 2012, I find that the landlord did make the application within 15 days of receiving the tenant's written forwarding address.

Rent

With respect to the rental arrears owed, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. In this instance I find that the tenant did not pay the rent which was to be paid when it was due. I find that the landlord is entitled to be compensated \$210.00 for rental arrears.

Monetary Claims for Damages

With respect to the landlord's claim for damages, section 7 of the Act provides that, if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

In this instance, the landlord did not conduct a move-in condition inspection report nor a move-out condition inspection report signed by both parties. I find that this has affected the evidentiary weight of the landlord's claims for damage to the suite and the cost of cleaning.

In addition, I find that no invoice was submitted for the claimed expenditure for the garbage removal.

Based on the evidence, I find that the landlord's claims for damages must be dismissed.

Based on the evidence and testimony, I find that the landlord is entitled to total monetary compensation in the amount of \$260.00 comprised of \$210.00 rent owed, and the \$50.00 cost of this application. I order that the landlord retain this amount from the tenant's \$300.00 security deposit leaving a remainder of \$40.00 to be returned to the tenant.

I hereby grant the tenant a monetary order under section 67 for \$40.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's application is dismissed without leave.

Conclusion

The landlord was partially successful in the claim and was ordered to retain a portion of the tenant's security deposit in full satisfaction of the claim.

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 24, 2013.

Residential Tenancy Branch

