



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit, cleaning, and loss of rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural and Preliminary Matters

The landlord also requested retention of the tenant's security deposit; however, the security deposit has already been doubled and awarded to the tenant pursuant to a previous dispute resolution hearing and Monetary Order provided to the tenant under file no. 797516.

The tenant pointed out that although the landlord failed to serve her with his Application for Dispute Resolution within three days of making it on November 8, 2012. The tenant provided evidence that the landlord mailed his Application for Dispute Resolution on November 23, 2012 and the tenant did not receive it until December 21, 2012. Nevertheless, the tenant indicated she wished to continue with this proceeding as opposed to have the matter dismissed with leave. Accordingly, I continued with the hearing.

The tenant provided an audio recording on a compact disk as evidence without a written description of the evidence. The landlord acknowledged receiving the compact disc but stated he could not hear the recording on his equipment. As a party that submits digital evidence must provide a written description of the evidence and determine whether the other party can access the digital content, under Rule 11.8 of the Rules of Procedure, I excluded the audio recording from consideration.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation in the amount claimed for damage to the rental unit?
2. Has the landlord established an entitlement to compensation for loss of rent for the month of August 2012?

Background and Evidence

The tenancy commenced April 1, 2012 and the tenant was paying rent of \$725.00 per month. Rent was due on the 1st day of every month. The landlord did not prepare a written tenancy agreement and did not prepare move-in or move-out inspection reports.

The landlord is seeking to recover loss of rent for the month of August 2012 in the amount of \$725.00 and compensation for damage and cleaning in the amount of \$1,660.00.

The manner and the date the tenancy ended was in dispute.

The landlord submitted that he did not receive any notice from the tenant that the tenancy was going to end; nor, did the landlord know the tenant had vacated until entering the unit on August 20, 2012 – 10 days after posting a 10 Day notice to End Tenancy for Unpaid Rent. The landlord did acknowledge receiving a forwarding address in writing from the tenant in his mailbox on August 2, 2012 but claimed he did not know this meant the tenant had moved out.

The tenant submitted that she verbally told the landlord on June 9, 2012 that she was going to end the tenancy July 15, 2012. The tenant wanted to pay one-half month's rent for July 2012 but the landlord insisted on rent for the entire month of July 2012. The landlord also told the tenant to find replacement tenants and to advertise the unit for rent at the monthly rate of \$750.00. The tenant proceeded to post advertisements for the unit on June 11, 2012 and renewed the ad on June 23, 2012. The ads contain the landlord's phone number and indicate the rental unit was available July 15, 2012 for \$750.00 per month. There were two showings of the unit to prospective tenants while the tenant resided in the unit. During those showings the landlord waited outside or in his unit.

The tenant also submitted that the landlord knew the tenant had moved out as the landlord lives above the rental unit in the same house and there were two dates scheduled for the landlord and tenant to inspect the unit for cleanliness: July 15 and

July 18, 2012. The tenant acknowledged being late for one appointment because her son was sick. The tenant claimed there were discussions about return of the security deposit with the landlord and that he indicated he would return the deposit when the unit was clean. The tenant sent her mother and aunt to clean the unit again but then the landlord started avoiding the tenant's calls.

The landlord largely denied all of the above submissions made by the tenant.

The tenant claimed she had copies of the advertisements she posted with the landlord's phone number and phone records showing all of the phone calls to the landlord in an effort to meet with the landlord for an inspection and return of the security deposit. The tenant also pointed to the forwarding address being given to the landlord which he acknowledged receiving August 2, 2012.

The parties were in agreement that the keys were not returned to the landlord. The tenant explained that this was because the landlord would not answer the phone or the door or show up for meetings they arranged.

With respect to damage to the unit, the landlord submitted the following:

- The tenant had replaced a section of pipe under the sink and it began leaking. The landlord had plumbing work done at a cost of \$168.000.
- The tenant damaged the kitchen cabinets which cost the landlord \$504.00 to repair.
- The tenant damaged the walls which required patching and repainting at a cost of \$728.00 (\$392.00 + 336.00). The unit was last repainted two years prior.
- The landlord had the unit cleaned at a cost of \$260.00 on October 29, 2012.

The landlord provided photographs and receipts as support for his claims against the tenant.

The tenant denied responsibility for any damage or cleaning. The tenant claimed the unit was unclean when she moved in and that there was food and furniture left by the previous occupants. Nevertheless, she left the unit sufficiently clean at the end of the tenancy, especially considering her mother and aunt returned to do more cleaning.

The tenant claimed the unit required repairs when her tenancy began and the tenant did not replace any piping under the sink. The tenant pointed out that her tenancy was only three months long and she did not damage the cabinets or walls as submitted by the landlord.

Analysis

Under the Act a tenant is required to give a landlord at least one full month of written notice to end a month-to-month tenancy. The tenant did not do so in this case.

A violation of the Act does not give rise to an automatic monetary award to the other party. Rather, in addition to proving the other party violated the Act, regulations or tenancy agreement, the party making the monetary claim has to prove that the violation caused the party making the claim to incur damages or loss as a result of the violation. The burden of proof is based on the balance of probabilities.

Upon hearing from both parties, I prefer the tenant's version of events over that of the landlord based upon the following considerations:

- I find it very unlikely that the landlord would be unaware that the tenant vacated the rental unit in July when the landlord lives in the same house, in a unit above the tenant;
- I find it very likely that receiving a forwarding address on August 2, 2012 would lead a reasonable person to at least suspect a tenant has moved out or was planning to move out.
- The tenant was willing to provide copies of advertisements and phone records as evidence the landlord was aware that the unit was going to be and was vacated by July 15, 2012.

Having found the tenant's version of events more likely, I accept that the tenant informed the landlord that she would be vacating the unit by July 15, 2012. I also accept that the landlord acted upon this information by instructing the tenant to advertise for replacement tenants, set the rent at a higher amount, and the landlord received enquires about the unit from prospective tenants in June 2012. Therefore, I find the landlord's actions consistent with implied waiver of his entitlement to receive written notice.

Although the unit may not have re-rented as of August 1, 2012 I find I am not satisfied that this is due to the tenant's lack of written notice to end tenancy. Rather, I find it just as likely that the unit did not re-rent because it did not show well in the condition it was in and the landlord was attempting to set the rent at a higher amount.

With respect to damage to the rental unit I find it largely undisputed that the rental unit required repairs at the end of the tenancy. The issue is whether the tenant caused the damage to the rental unit.

Written condition inspection reports are a requirement of the Act and are intended to establish the condition of a rental unit at the beginning and end of a tenancy so as to avoid disputes as to which party is responsible for repairing a unit. The landlord is either unaware of his obligations to provide written tenancy documents such as a tenancy agreement and condition inspection reports or has decided not to do so for his own reasons. In either case, the landlord has a legal obligation to complete such documentation.

While the lack of condition inspection reports does not automatically result in a dismissal of the landlord's claims to damage, the landlord has very little evidence, if any, that the tenant caused the damage for which he is seeking compensation.

Considering the tenancy was for a very brief period of time and in the absence of any other evidence as to the condition of the rental unit at the beginning of the tenancy I find the landlord has not met his burden to prove the tenant caused all of the damage for which the landlord is seeking compensation. Further, I find the cleaning invoice dated October 29, 2012 not sufficiently linked to the tenancy which ended July 15, 2012.

For all of the reasons given above, I deny the landlord's claims against the tenant for damage, cleaning and loss of rent. Therefore, the landlord's application is dismissed in it's entirely.

Conclusion

The landlord's application has been dismissed.

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: February 07, 2013

Residential Tenancy Branch

