



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR, MNSD
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the landlord clarified that she had not re-rented the rental unit until January 1, 2013, however she did not seek to amend her application to include lost revenue for the month of December 2012, prior to the hearing.

As such, I found it would have been unfair to amend the landlord's Application during the hearing to include this lost revenue and declined the landlord's amendment. I note however, the landlord remains at liberty to file a separate and new Application for Dispute Resolution seeking any additional lost revenue.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; compensation for damage or loss; and for all or part of the security deposit, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Act*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on February 27, 2012 for a 1 year fixed term tenancy beginning on July 1, 2012 for a monthly rent of \$1,900.00 due on the 1st of each month with a security deposit of \$950.00 paid.

The parties agree the tenancy ended, on October 31, 2012, after the tenant had provided the landlord with a written notice to end the tenancy on September 30, 2012

citing that the rental unit was not safe for her and her children due to the proximity of the children's father.

The landlord seeks compensation for the lost revenue for the month of November 2012 in the amount of \$1,900.00; \$10.00 advertising costs; and \$50.00 for gas to commute between her home community and the location of the rental unit for showings to potential tenants. The landlord has provided a copy of a receipt for advertising in the amount of \$10.00.

The tenant submits that although the reason she gave to the landlord for ending the tenancy was solely related to the location of the rental unit and its proximity to the tenant's children's father she also had many other reasons to end the tenancy.

The tenant submits that she should have known there was going to be problem after signing the tenancy agreement in February 2012 and receiving a call from the landlord in mid June 2012 asking if she could delay moving in because their plans in their new community had fallen through and asking if they could move the start date of the tenancy from July to August 2012.

The tenant submits that at the start of the tenancy the rental unit was filthy and required extensive cleaning inside and outside. The tenant submits that the rental unit required 100 hours of cleaning which included cleaning the stove/oven; counter and cupboards; floors; and the yard.

The tenant submits as an example that oven took 8 hours to clean before she could actually use the self-cleaning function and still had to replace the 4 burner trays. The tenant submits that the kitchen cupboards and counter were greasy and there was a rancid smell in the cupboards; that she had to clean the floors several times, including the grout lines; and that the yard required substantial clean up.

The tenant has submitted several photographs to show the condition of the unit at the start of the tenancy. The photographs include 7 photographs of the flooring; 4 of the oven/stove; a rag the tenant submits was used to clean the floor after the third washing; the corner of the kitchen sink; a crack in a wall; and a comforter.

The tenant confirmed in her testimony that she did not inform the landlord of these conditions because she did not want to insult the landlord. The tenant provided copies of emails sent to the landlord identifying various issues during the tenancy as follows:

- July 7, 2012 advising the landlord it took several hours to clean the stove and oven;
- July 15, 2012 requesting the landlord have her mail re-directed by Canada Post as she is not comfortable being responsible for forwarding mail;
- August 25, 2012 requesting repairs to the toilet; adjusting the temperature of the hot water; and some electrical issues indicating a breaker was tripping;

- October 3, 2012 indicating there was a leak in the gas fireplace that the tenant had had temporarily repaired;
- October 8, 2012 indicating the tenants below were playing music too loudly; concerns about the landlord's attempts to re-rent the house while the house is listed as also for sale; failure of an electrical inspection; the gas leak; and reference to being talked about by neighbours when she is not present;
- October 13, 2012 indicating continuing problems with the electrical service and a new problem with silverfish;

The tenant testified that as a result of all of these issues she felt she had no choice but to end the tenancy for the safety of her children. The tenant acknowledges that the reason she gave the landlord did not include any of these issues.

The tenant also seeks compensation for the following:

Description	Amount
Cleaning – 100 hours at \$20.00 per hour	\$2,000.00
Stove trays – 4 at \$8 each	\$32.00
Closet shelf and hardware	\$28.42
Cleaning Solution	\$11.99
Replacement of wood stain	\$14.99
Notary fee	\$22.40
Photograph development	\$9.58
Total	\$2119.38

The tenant testified that the landlord, despite two requests since the end of the tenancy has failed to return some wood stain. The landlord provided no testimony in regard to the stove trays or the wood stain. The landlord testified the tenant had requested a shelf in one of the bedroom closets and the landlord had agreed to install this, however, the landlord stipulates that there was no requirement for them to do so.

The landlord testified that she had cleaned the whole house prior to the start of the tenancy with the exception of the oven. The landlord submits that the tenant's standards for cleanliness are exceedingly high.

The landlord also submits that the reason an electrical inspection was completed was at the request of their insurance company when they had to change from a homeowner's insurance to rental property insurance and after they had identified to the insurance company the presence of wiring that is no longer to code. The landlord submits that they had hired a contractor and the work was completed in September 2012.

Analysis

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one

month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Despite the tenant's testimony and submissions that she had alternate reasons to end the tenancy, I find that even if she did she did not identify to the landlord, in writing, that she felt that the landlord had failed to comply with a material term of the tenancy; provide the landlord with time to correct it; and note in her notice that she intended to end the tenancy if the landlord failed to correct it.

As such, I find the tenant has breached the end date of the fixed term of the tenancy and the landlord has suffered a loss in the amount of rent for the month of November 2012. I also accept the landlord also incurred a cost of \$10.00 for advertising the rental unit for new potential tenants.

As to the landlord's claim for compensation in the amount of \$50.00, I find that it is a choice the landlord makes to have a rental property in one community and live in another and as such the tenant cannot be held responsible for costs associated with these choices made by the landlord, regardless of the circumstances. I dismiss this portion of the tenancy agreement.

In relation to the tenant's financial claim, in the absence of any testimony from the landlord disputing these items, I find the tenant has established she is entitled to compensation for the replacement stove trays in the amount of \$32.00 and wood stain in the amount of \$14.99. As the tenant's claim to recover costs for having her witness statement notarized and photographs developed are choices the tenant made to pursue her claim, I find the landlord cannot be held responsible for these costs.

Based on the testimony of both parties I find that the shelf and hardware purchased by the tenant for installation in the bedroom closet was not a requirement either under the *Act* or the tenancy agreement. Therefore I dismiss this portion of the tenant's Application.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

The *Act* does not specifically address the issue of how clean a rental unit must be at the start of a tenancy other than the unit being suitable for occupation by a tenant. I accept,

based on the testimony of both parties, that the stove/oven required cleaning. I also accept that the unit may have required additional cleaning at the start of the tenancy.

However, I find the photographic evidence provided by the tenant does not substantiate a need to spend 100 hours cleaning. For example, the tenant submits that it took 8 hours to clean the oven to a point that she could then turn on the self-cleaning function to clean the oven. Additionally, I find the evidence does not support a need for the tenant to spend hours cleaning the tile and grout lines for which the landlord should be held responsible.

Further, as the tenant had not raised the issue of the cleanliness, other than the oven, to the landlord in any correspondence up to the point in time that she filed her Application for Dispute Resolution (on February 18, 2013) I find she cannot now seek compensation for something the landlord was not even aware she was that concerned about.

I do, however, find that since the tenant had raised the issue of cleaning the stove and oven as soon as she moved and in recognition that there have been some additional cleaning required I find the tenant is entitled to compensation for some cleaning and I grant the tenant the equivalent of 10 hours cleaning at \$20.00 per hour plus her supply costs of \$11.99.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,626.02** comprised of \$1,900.00 rent owed; \$10.00 advertising less \$283.98 for tenant's entitlement for cleaning; supplies; stove trays; wood stain and \$25.00 of the \$50.00 fee paid by the tenant for her application. I order the landlord may deduct the security deposit and interest held in the amount of \$950.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$676.02**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: March 04, 2013

