



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

The hearing was scheduled to proceed on March 6, 2013, at which time all parties attended the conference call hearing, but was adjourned by consent to April 10, 2013; the tenants had not received the landlord's evidence package. The landlord amended the application prior to the new hearing date, and the parties were ordered to exchange any evidence that either party wished to rely on at least 5 days prior to the new hearing date. The landlord and one of the tenants again attended on the second scheduled date, however, the other tenant did not attend. The landlord and the tenant each gave affirmed testimony, and the parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The parties agree that this month-to-month tenancy began on October 1, 2011, although the tenants actually moved in earlier, however rent was paid on the last day of each month in advance for the following month. The first month of rent collected by the landlord was for the month of October, 2011. Rent in the amount of \$850.00 per month was payable on the 1st day of each month, although the parties did not sign a written tenancy agreement, and the landlord did not collect a security deposit or a pet damage deposit. No move-in or move-out condition inspection reports were completed.

The landlord testified that the tenants failed to pay rent for the months of December, 2011, April, May, June, July, August or September, 2012. The landlord didn't notice at first, but eventually contacted the tenants. One of the tenants worked at a bank, and the landlord attended that place of employment and spoke with that tenant who promised to attend the landlord's bank during a coffee break to straighten out what may have happened to the deposits. The landlord provided copies of bank statements showing that deposits were made for rent by the tenants, but no deposits show on the statements for those months. Further, the tenants vacated the rental unit without any notice to the landlord, and the landlord was called by a City By-law officer who advised about garbage around the rental unit which could or did attract bears. The landlord attended the rental unit and believes the tenants moved out sometime in September, 2012 but is not sure of the date. The landlord claims unpaid rent in the amount of \$850.00 for December, 2011 and April through October, 2012.

The landlord also testified that during the first day of the hearing the tenants had indicated that some of the rent was paid in cash. The landlord has provided a list of baseball games and practices, and testified to being the head coach for the team and that each of the games and practices on the schedule were attended by the landlord. Therefore, the landlord could not have attended the rental unit to collect cash in a different town, and stated that it would have cost \$200.00 in travel expenses to do so.

The landlord also claims damages for the tenants' failure to clean and repair damage to the rental unit at the end of the tenancy. A receipt in the amount of \$135.82 has been provided and the landlord testified that was for repair and painting in the rental unit, and a hole from what appears to be a rock was left in a wall. Also provided is a receipt in the amount of \$357.00 for carpet replacement, and the landlord testified that the carpets

were old at the commencement of this tenancy. The landlord also provided a copy of a processed cheque issued by the landlord to a cleaning person for \$200.00, and provided photographs of the rental unit at the end of the tenancy to substantiate the lack of cleaning completed by the tenants. The cleaning was completed in October, 2012 but the invoice was paid by the landlord in January, 2013.

The landlord has also provided a written summary of the landlord's claim:

- \$33.95 for registered mail;
- \$135.82 for repair supplies;
- \$100.00 for the cost of filing the application for dispute resolution;
- \$367.00 for new rugs;
- \$72.80 for a one night stay in a hotel because the house was too disgusting to stay in until after it was cleaned;
- \$260.00 for the cleaner; and
- \$60.00 for serving documents.

The tenant testified that during the tenancy the landlord harassed the tenants to the point of the tenants attending the police station to file a complaint. The police responded that the situation described was civil in nature. However, the landlord also wrote letters to the bank that the other tenant worked at which caused problems at work, and ultimately caused the break-up of the couple.

The tenant also testified that some of the rent claimed by the landlord was paid in cash but in the absence of the other tenant, no dates can be provided, as the other tenant had such information. Therefore, the tenant has no defence to the unpaid rent claim, but does not agree with any damages claimed by the landlord and does not agree that the landlord ought to be successful in recovering the filing fee because the landlord failed to ensure a written tenancy agreement was in place.

Analysis

Firstly, with respect to the landlord's claim for unpaid rent, I have reviewed the evidence, and particularly the bank statements provided by the landlord. I find that the tenants paid rent directly into the landlord's account for the first 3 months of the tenancy and to that account again in January, February and March, 2012. No deposits are evident for December, 2011 or April through October, 2012. The tenant provided no testimony that would satisfy me that any rent payments for those months was paid by cash, and the landlord denies that. It also doesn't make sense that the tenants would pay by cash when the landlord resides in a different city than the rental unit and other

rent payments were made by deposits to the landlord's account. Therefore, I find that the landlord has established a claim as against the tenant for unpaid rent in the amount of \$5,950.00 for those months. With respect to the landlord's claim for rent for the month of October, 2012, I find that the landlord is entitled to that claim as a loss of revenue, because if the tenants had given the notice required under the *Act* during the month that the tenants vacated the rental unit, the notice would not have taken effect until the end of October, 2012 in any event.

The *Residential Tenancy Act* states that a landlord must cause a move-in and a move-out condition inspection report to be completed and the regulations go into detail of how those reports must be completed. If a landlord fails to complete the reports with the tenant and provide the tenant with a copy, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished. In this case, there are no deposits for the landlord to claim against. However, the regulations also state that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy.

Further, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such loss.

I have reviewed the photographs provided by the landlord, however one appears to be an unfinished storage room, and there are items left in the fridge. The carpet in the living room appears to require vacuuming, but is also wrinkled, and the landlord agreed that the carpet was old. However, having reviewed all of the evidence, I have no evidence before me to satisfy me of the condition of the rental unit at the beginning of the tenancy. The same applies to the holes in the walls and floors; I have no evidence of whether or not the holes were present at the beginning of the tenancy. Therefore, I find that the landlord has failed to establish element 2 in the test for damages. I further find that the landlord has failed to establish that the tenants ought to be held accountable for a night in a hotel, and the landlord has failed to establish element 2 in the test for damages.

With respect to the landlord's claim for registered mail and service of documents, the *Residential Tenancy Act* states that an order may be made for payment or repayment of a fee for starting these proceedings, but does not include recovery of service fees.

With respect to the tenant's testimony that the landlord ought not be awarded recovery of the filing fee because no written tenancy agreement was in place, the *Act* states that a tenancy agreement exists with standard terms whether or not it is ever put in writing. A landlord is required to provide a copy of a written tenancy agreement to a tenant, but if none exists, there is no consequence under the *Act*.

In summary, I find that the landlord has established a claim as against the tenants for unpaid rent in the amount of \$5,950.00 and loss of revenue in the amount of \$850.00. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of the application. The balance of the landlord's claim is hereby dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against both named tenants, jointly and severally, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$6,900.00.

This order is final and binding on the parties and may be enforced.

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: April 17, 2013

Residential Tenancy Branch

