



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

At the outset of the hearing the landlord requested amending her application to reduce her financial claim from \$3,390.00 to \$2,270.00. I granted the amendment.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for unpaid rent and lost revenue; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on November 1, 2012 as a 6 month fixed term tenancy for a monthly rent of \$1,095.00 due on the 1st of each month with a security deposit of \$547.50 paid. The parties also agree the tenants vacated the rental property on January 16, 2013 and that rent was paid for the full month of January 2013. The tenants provided the landlord with their forwarding address on January 18, 2013.

The parties agree the tenants provided the landlord with a letter dated December 31, 2012 requesting the landlord to make specific repairs no later than January 15, 2013 or they would be terminating their tenancy. The specific repairs sought were regarding a leaking fridge; a broken bathroom window; a bathroom floor; previous tenants' yard waste and items; and porch light still missing.

The tenants submit that they believe the landlord was aware of all of these problems prior to entering into the tenancy agreement and that she misled the tenants. The

tenants submit that despite requests to make repairs the landlord failed to do so and as such they believe they were entitled to end the tenancy.

The landlord submits that while she had been made aware of some of the items listed in the December 31, 2012 letter, she was not aware of the porch light issue and could only assume that it required a new light bulb. The parties agreed the landlord reduced rent for December 2012 and January 2013 by \$100.00 for the repairs not completed.

The landlord submits that she was looking for a new fridge; had ordered a replacement bathroom window and the bathroom floor had been completed.

The landlord testified she began advertising on Craigslist and a local "used" website on January 18, 2013 and that she entered into a tenancy agreement with new tenants on March 26, 2013 for a tenancy beginning on April 1, 2013.

The landlord submits that she had arranged to meet the tenants on January 17, 2013 and that she emailed them about an hour before the appointed time to state that she couldn't get there in time and gave them a choice to meet at their convenience but that she never heard from the tenants again. The parties agree the tenants left the keys to the rental unit in an envelope in the mailbox on this date.

The landlord seeks \$80.00 for 4 hours of cleaning the rental unit due to the condition it was left in after the tenants vacated the rental unit. The landlord provided some photographs which included lint from the dryer; stove; oven; and a medicine cabinet that all required cleaning.

The tenants submit they have no idea how the medicine cabinet was in the condition it was in the photograph. They also state that the stove and oven were in that condition when the landlord installed them after they reported that the stove that was in the unit at the start of the tenancy was working. They acknowledge they may have missed emptying the lint trap in the dryer.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

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.

A material term of a tenancy agreement is defined in Residential Tenancy Policy Guideline #8 as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the tenancy.

As neither party provided a copy of a written tenancy agreement I cannot determine if there is a clause in the tenancy agreement regarding repairs or the length of time to make them. As such, I find the tenants, while relying on their requests for repairs as a material term, have not provided any evidence to establish repairs were a material term of the agreement.

Further, I note that the landlord was compensating the tenants for living in the unit while the repairs were being address by reducing their rent for at least two months and from her undisputed testimony, I accept that she was taking care of the repair requests that she was aware of prior to the tenants issuing their notice to end the tenancy.

I also find that the tenants, despite their claims that the landlord was aware of the problems with the rental unit and fraudulently represented its condition prior to entering into the tenancy agreement, have provided no evidence to establish this position. I also note that the tenants did not seek to have an order from a Residential Tenancy Branch Arbitrator to compel the landlord to make repairs.

For these reasons, I find the tenants have failed to establish the landlord had breached a material term of the tenancy and had no grounds to end the tenancy prior to the end of the fixed term. As such, I find the tenants breached the tenancy agreement and are responsible for the payment of rent for the months of February, March, and April 2013, subject to the landlord's attempts to mitigate this loss.

However, as noted at the outset of the hearing the landlord had re-rented the unit effective April 1, 2013 and the tenants are no longer responsible for that month. I also accept the landlord's undisputed testimony that she took sufficient and reasonable steps to mitigate her losses by beginning her advertising on January 18, 2013.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

From the photographic evidence submit, in regard to the landlord's claim for cleaning, I accept the rental unit required some cleaning after the tenant's vacated the rental unit, however, I am not satisfied that the cleaning outlined would require 4 hours work. Therefore, I find the landlord is entitled to \$40.00 for two hours cleaning.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

In the case before me, I find the tenancy ended when the tenants provided the landlord with their keys on January 17, 2013 and that they provided their forwarding address to the landlord on January 18, 2013. As such, the landlord had until February 2, 2013 to file her Application to claim against the deposit to be compliant with Section 38(1). I find the landlord filed her Application on February 1, 2013 and is therefore compliant.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,280.00** comprised of \$2,190.00 rent owed; \$40.00 cleaning and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$547.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,732.50**.

This order must be served on the tenants. If the tenants fail 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: April 29, 2013

Residential Tenancy Branch