



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 dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of repairs, cleaning, unpaid rent, storage fees, the cost of changing locks and the filing fee. The tenant applied for the cost of her washer and dryer that she left behind in the rental unit and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order to recover the cost of repairs, cleaning, unpaid rent, storage fees and the filing fee? Is the tenant entitled to a monetary order for the cost of her appliances?

Background and Evidence

The tenancy started in July 2010. The rental unit at that time was a one bedroom suite. In March 2011 the tenant moved into a two bedroom suite in the same unit. The tenancy ended in November 2011. All arrangements were verbal. The parties have a son together.

The testimony of both parties was contradictory on every aspect of the issues at hand. The landlord stated that the rent was \$600.00 per month right through the tenancy. The tenant stated that the rent was \$350.00 at the start of the tenancy and then increased to \$600.00 in March 2011, when the tenant moved into the two bedroom unit.

The tenant stated she paid all rent owed while the landlord filed a statement showing that the tenant owed \$7,100.00 in unpaid rent for the period of the tenancy. The landlord stated that he did not issue receipts for rent paid because the tenant did not want any. The tenant stated that the landlord did not issue receipts because the rental unit was illegal.

However, the tenant stated that she did make a deduction of \$250.00 for child support each month. The tenant stated that instead of having child support going to the government agency that handled the enforcement of child support, the parties decided to make a deduction off rent, in this amount.

The landlord stated that he did not agree to this deduction and that his payment of child support was less than \$250.00 per month. I informed both parties that issues regarding child support were not within my jurisdiction and would be best addressed at the appropriate agency.

The landlord stated that the tenant left behind garbage and did not clean the entire unit. During her testimony, the tenant confirmed that she had left some garbage behind and had not cleaned the kitchen. The landlord also filed photographs showing damage to the walls, stickers on the ceiling and marks on the walls that he stated were from the tenant's dog. The tenant argued that the photographs were printed in March 2013 and did not represent the condition of the unit as she had left it, when she moved out in November 2011. The landlord agreed that the photographs were taken in August 2012 just prior to the new tenant moving in.

The landlord stated that he allowed the tenant to store her belongings in a storage room, but the tenant's belongings were left "*all over the place*" The tenant agreed that she left her belongings in the rental unit after she moved out in November 2011. She returned on December 26, 2011 and took away most of her belongings. The tenant stated that due to a motor vehicle accident, she was unable to retrieve the balance of her items until March 12, 2012. The tenant filed a copy of the text messages between the two parties.

The landlord is claiming storage fees for the period of January 2012 to June 2012. The landlord agreed that there was no contract between the parties either verbal or written regarding storage fees. The tenant stated that the landlord allowed her to store her items and did not suffer a loss of income because he could not rent the suite due to the local city bylaws which did not permit him to do so. The suite remained vacant for approximately nine months after the tenant had moved out.

The landlord stated that the tenant did not return keys to the front and side doors of the rental unit. The tenant stated that she did not return just one key. The landlord is claiming the cost of replacing all the locks and dead bolts. He has filed a photograph of a lock display as set up in a store which shows the cost of the locks, as evidence to support his claim.

The landlord is also claiming the cost of obtaining court transcripts and photographs which he filed into evidence.

The landlord is claiming the following;

1.	Unpaid rent for July 2010 to November 2011	\$7,100.00
2.	Storage fees for January 2012 to June 2012	\$1,200.00
3.	Cleaning, repairs and painting	\$300.00
4.	Changing locks	\$291.14
5.	Court transcripts	\$150.00
6.	Photographs	\$10.39
7.	Filing fee	\$50.00
	Total	\$9,101.53

The tenant stated that the landlord refused to return her washer and dryer until she paid \$1,360.00 for storage fees. The tenant filed a copy of a receipt of purchase of the appliances which is made out in the name of the tenant's ex partner and is dated March 2008. The tenant is claiming \$1,903.89 as compensation and \$50.00 for the filing fee.

Analysis

Landlord's application:

1. Unpaid rent - \$7,100.00

Based on the testimony of both parties I find that the tenant was required to pay \$600 per month for rent. The tenant testified that she made deductions in the amount of \$250.00 per month towards child support. The tenant further testified that this arrangement worked well until the start of problems in the relationship between the landlord and their son.

I find that in the absence of an agreement from the landlord, the tenant could not set off any amount owed to her by the landlord through obligations unrelated to the tenancy.

Pursuant to the *Residential Tenancy Act*, the landlord had the right to demand strict compliance with the terms of the tenancy agreement but he chose not to do so and for the entire term of the tenancy of 17 months, he accepted the rent in an amount that was reduced as a result of the set off.

The landlord also had the right to terminate the tenancy by serving the tenant with a notice to end tenancy for unpaid rent but again, he chose not to do so and allowed the tenancy to continue by accepting rent in the reduced amount paid by the tenant.

The parties communicated by text message and a transcript of the messages was filed into evidence. Upon review of the transcript of the text messages between the parties after the tenancy ended, I find that the landlord did not ask for unpaid rent. There are two references made to rent.

On March 10, 2012, the landlord states:

"if your going to keep bugging me, I want what the tenancy act would demand! All the rest of November's rent, \$200 per month storage and cost to have all my locks changed because you never gave my keys back"

The tenant replied *"I gave u half November rent"*

The conversation continues but the landlord does not mention unpaid rent from any other months. He asks for fees of \$1,360.00 but does not explain the nature of the fees in the text message. His statement implies that he would only ask for the balance of rent for November if the tenant continued "bugging" him. I therefore find that on a balance of probabilities, it is more likely than not that the tenant did not owe rent and if she did, the landlord would have asked for it when he referred to rent paid for the last month of the tenancy.

I find that this is a situation to which the legal principle of acquiescence should be applied. This tacit agreement, known as acquiescence, communicated to the tenant that the landlord would not enforce the terms of the tenancy agreement and I find that the landlord is now estopped from retroactively making that demand. For the above reasons, I dismiss the landlord's claim for unpaid rent in the amount of \$7,100.00.

2. Storage fees - \$1,200.00

The landlord testified that he did not have an agreement or a written contract with the tenant to pay for storage. In one of the text messages the landlord states *"I said you could store your stuff in the one storage room not leave it all over the place."* This message does not mention any storage fees.

In addition the landlord did not rent out his unit for several months after the tenant moved out. Therefore I find that the landlord did not suffer a loss of income due to the items stored inside the rental unit. In the absence of an agreement to pay storage fees, I dismiss the landlord's claim.

3. Cleaning repairs and painting - \$300.00

The tenant agreed that she had some cleaning to be done and had left some garbage in the rental unit. The tenant denied having caused damage to the walls.

Based on the date the photographs were taken which is not earlier than August 2012, I find that the landlord has not proven that the photographs represent the condition of the unit at the end of tenancy in November 2011.

The landlord has filed a receipt with a breakdown of amounts paid for each service. Based on the testimony of both parties I find that the landlord is entitled to \$140.00 for cleaning and disposal of garbage. The remainder of this portion of the landlord's claim is dismissed.

4. Changing locks - \$291.14

The landlord did not file any proof of purchase of locks. Therefore I find that the landlord is not entitled to his claim.

5. Court transcripts - \$150.00

6. Photographs - \$10.39

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly the landlord's claims for the cost of transcripts and photographs are dismissed.

7. Filing fee - \$50.00

Since the landlord has proven a portion of his case, I award him the recovery of the filing fee.

Overall the landlord has established a claim for cleaning (\$140.00) and the filing fee (\$50.00) for a total of \$190.00.

Tenant's Application

Based on the testimony of the both parties, I find that the landlord retained the laundry machines and did not allow the tenant to retrieve them. Therefore I order the landlord to return the appliances to the tenant. The tenant will contact the landlord and make an appointment to visit the rental unit with a technician, for the purpose of removing the washer and dryer. The landlord must be given at least 24 hours notice and this removal of the machines must be done by May 15, 2013.

Since the tenant's case has merit, I award her the recovery of the filing fee.

The landlord has established a claim of \$190.00 and the tenant has established a claim of \$50.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$140.00, which consists of the difference in the entitlements of the parties. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$140.00**.

I order the landlord to return the washer and dryer to the tenant on or before May 15, 2013.

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 18, 2013

Residential Tenancy Branch

