



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with two related applications. File L is the landlord's application for a monetary order and file T is the tenant's application for return of double the security deposit. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced August 1, 2011, and continued thereafter as a month-to-month tenancy. The monthly rent of \$1550.00 was due on the first day of the month. The tenant paid a security deposit of \$775.00. A move-in inspection was conducted and a move-in condition inspection report was completed.

The tenant had planned a trip to Australia and her planned departure date was November 27. The parties agreed that the tenancy would end on November 27 and that the November rent would be prorated to that date.

On November 22 the tenant made the following request to the landlord by e-mail: "I will still be getting mail at this address while I'm overseas. Do you mind collecting it and holding onto it for me until January? I don't have a new address yet, so this would be convenient for me", to which the landlord replied: "No worries re: the mail. This is totally fine."

The parties agreed that the move-out inspection would take place on November 27 at 3:30 pm.

There then arose a dispute as to whether the security deposit would be paid immediately to the tenant and whether it would be paid by cheque, electronic transfer or other means. The tenant's evidence is that she was counting on having that money for her trip.

At 1:58 pm on November 27 the tenant sent the landlord a message that there was "no need to come at 3:30. We can do inspection tomorrow. I had to change my plans bcuz of my deposit. I have paid rent until today anyway."

The landlord responded at 2:21 pm: “. . . I am in Calgary from 7 am until 5:30 pm tomorrow. I would much prefer to deal with the amicably today. . . Please let me know by 3:45 if you wish to do inspection today. Additional rent will be charged for tomorrow and I will be unavailable until 7:00 pm for an inspection.” The landlord testified that he had scheduled this business trip to Calgary after they had set November 27 for the move-out inspection.

At 4:55 pm the tenant responded: “Neither of those times work for me.”

The tenant testified that by the time she sent that message she had vacated the rental unit and had decided that since the landlord could not do the inspection until the following evening she would see if she could leave for Australia that night as originally planned. She went to the airport and was able to get a flight for that evening.

On November 28 at 4:59 pm, in response to the landlord's message asking about doing the inspection that evening, the tenant advised the landlord: “I vacated the unit yesterday as planned. I am unable to meet you for an inspection today as I already mentioned so please go ahead and conduct it without me and e-mail a scanned copy for my records.” The tenant testified that by the time she sent this message she was out of the country.

The landlord went to the rental unit on the evening of November 28. The door was unlocked and there were no keys in the unit. The landlord had the locks changed that evening at a cost of \$325.00. He subsequently had the FOBs reprogrammed. He testified that it took the strata until January to comply with his request and they charged him \$110.00 for the service. The tenant testified that she still had the keys and FOBS.

The landlord's evidence is that there was garbage left in the rental unit and it had not been properly cleaned. In particular, there was hardened cleaning product on the bathroom fixtures that had to be cleaned off. The tenant testified that in general she is a clean person. She said she knew the bathroom would have to be cleaned because she had sprayed cleaner on the bathroom fixtures before she left. She also acknowledged that the floors would have required cleaning. She also stated that she only left a half-full bag of garbage behind.

The tenant testified that there had been some issues about the cleanliness of the unit at the start of this tenancy. The parties agreed that the landlord had given the tenant a credit for additional cleaning. The tenant testified that the landlord also told her she did not have to clean the unit when she left. The landlord testified that he did not remember what he said during this conversation; it may have been to leave the place in the same condition as she received it.

The landlord testified that the floors were not in great shape at the start of this tenancy and that he had always intended to have them refinished at the end of this tenancy. He testified that the floors were in much worse condition at the end of the tenancy and part of his claim for leaning and damages is the time he spent filling holes in the floor. He

did have the floors refinished and no claim is made for the refinishing. The tenant testified that the floors were in the same condition at move-out as they were at move-in.

The landlord also testified that he spent time filling in holes in the walls and baseboards and removing double-sided tape from the walls.

The landlord also claimed a \$7.00 NSF fee for a cheque that had been dishonoured by the tenant's bank in 2012. The tenant did not deny that there had been a problem with the cheque. Both parties agreed that there had been no discussion at the time about any bank charges that may have been charged to the landlord by his bank.

Finally, the landlord claims one additional day of rent, \$55.00, for November 27 to November 28.

The landlord completed a move-out condition inspection report. The parties agree this was given to the tenant, together with her mail, on January 25, 2013.

One of the issues between the parties was that the landlord wanted the tenant's forwarding address in writing before returning the security deposit to her. The tenant took the position that since the landlord had agreed to collect and hold her mail for her while she was away, the address of the rental unit was her forwarding address. This is evidenced in a text message of November 27: "You agreed to collect my mail for me while I'm overseas. . .that is my forwarding address."

On February 6 the tenant gave the landlord her new address by text message and by e-mail.

The landlord issued his application for dispute resolution on February 20 and served it by registered mail at the address given by the tenant. The tenant issued her application for dispute resolution on March 11. The address for service given for the tenant is the same address as provided in her previous text message and e-mail.

Applicable Law

Section 35(1) of the *Residential Tenancy Act* requires a landlord to conduct a move-out inspection on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed day. Subsection (2) obliges a landlord to offer at least two opportunities for the inspection and section 17 of the *Residential Tenancy Regulation* sets out the procedure to be followed by the landlord when offering dates for the inspection. This includes providing the tenant with a notice in the prescribed form. Section 16 of the *Regulation* requires the parties to attempt, in good faith, to mutually agree upon a date and time for the condition inspection. Subsection (3) states that when providing each other with an opportunity to schedule a condition inspection the landlord and the tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection. Section 35(5) of the *Act* allows a landlord to make the inspection and complete and sign the report without the tenant if:

- the landlord has complied with section 35(2) and the tenant has not attended on either occasion; or,
- the tenant has abandoned the rental unit.

Section 18(1)(b) of the *Regulation* requires a landlord to give the tenant a copy of the move-out condition inspection report within 15 days of the later of :

- the date the condition inspection is completed; or,
- the date the landlord receives the tenant's forwarding address in writing.

Section 36(2) of the *Act* states that unless the tenant has abandoned the rental unit a landlord's right to claim against a security deposit or pet damage deposit or both is extinguished if the landlord:

- did not offer the tenant two opportunities for inspection;
- offers the tenant two opportunities for inspection but does not attend on either occasion; or,
- having made an inspection with the tenant does not give the tenant a copy within the time limit specified by section 18(b) of the *Regulation*.

Section 38(1) of the *Act* states that within 15 days of the later of:

- the day the tenancy ends; and,
- the date the landlord receives the tenant's forwarding address in writing;

the landlord must either:

- repay the security deposit or pet damage deposit to the tenant; or,
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) states that a landlord who does not comply with section 38(1):

- may not claim against the security deposit or pet damage deposit; and,
- must pay the tenant double the amount of the security deposit, pet damage deposit, or both.

Section 37(1) of the *Act* specifies that, unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1:00 pm, on the day the tenancy ends.

Subsection 37(2) requires a tenant who is vacating a rental unit to:

- leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear; and,
- give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 57(3) of the *Act* allows a landlord to claim compensation from an overholding tenant (who is defined as a tenant who continues to occupy a rental unit after the

tenant's tenancy is ended) for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Section 88 of the *Act* provides that all documents that are required or permitted under the Act to be given or served on a person must be given or served in one of the listed ways. E-mail and text messages are not included in the list of permitted methods.

Analysis

By leaving the country, thereby making meaningful service of a Notice of Final Opportunity to Schedule a Condition Inspection impossible, and by telling the landlord to go ahead with the inspection without her, the tenant waived her right to be served with the notice.

The tenant did not provide her forwarding address in writing by a means prescribed by section 88 of the Act until she served her application for dispute resolution on the landlord. By then the landlord had provided the tenant with a copy of the move-out condition inspection report and had filed an application for dispute resolution claiming against the security deposit thereby complying with sections 18(b) of the *Regulation* and section 38(1) of the *Act*.

As a result of the above findings, I find that neither section 36(2) nor section 38(6) apply to this situation.

The tenant was obligated to return the keys and FOBs when she vacated the rental unit. She did not and is therefore responsible for the costs of replacing them. I find that the landlord is entitled to payment of \$434.00 for these items.

The tenant was also obligated to leave the rental unit reasonably clean. I am satisfied on the evidence of the parties, particularly the tenant's own evidence, and the photographs filed by the landlord, that the unit was not let as clean as it should have been.

The evidence with respect to the damage claimed to the wood floors is not as compelling; particularly in light of the fact that they were refinished a short time later. Considering all the evidence I allow the landlord \$60.00 for cleaning.

By keeping the keys and the FOBs the tenant maintained control, and therefore possession of the rental unit until the landlord took possession by changing the locks. This was an overholding of one day. I find that, pursuant to section 57(3), the tenant is responsible for one day's rent, \$55.00.

The tenant is also responsible for the fee charged to the landlord by his bank when her cheque was dishonoured by her bank. I award the landlord \$7.00 for this item.

Finally, as the landlord was substantially successful on his application he is entitled to reimbursement from the tenant of the \$50.00 he paid for this application.

Conclusion

I find that the landlord has established a total monetary claim of \$606.00. I order that pursuant to section 72 the landlord retain the entire amount in full satisfaction of his claim. I also order that the landlord return the balance of \$169.00 to the tenant and I grant a monetary order to the tenant in that amount. If necessary, that order may be filed in the Small Claims Court and 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: June 12, 2013

Residential Tenancy Branch