



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, MNDC, FF
Tenant: MNDC, MNSD, FF, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

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

The hearing was originally convened in response to the tenant's Application seeking a monetary order but as the landlord had subsequently submitted her own Application seeking compensation resulting from the tenancy I adjourned the hearing of April 23, 2013 so that both Applications could be heard at the same time.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for the costs of cleaning and repairs to damage to the rental unit; 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)*.

It must also be decided if the tenant is entitled to a monetary order for motel costs; the cost of movers; and the costs of the tenants new rental accommodation for the month of February 2013; for double the amount 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 28, 32, 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant provided a copy of a tenancy agreement signed by the parties on March 2, 2008 for a 1 year and 1 day fixed term tenancy beginning on March 15, 2008 that converted to a month to month tenancy on March 16, 2009 for a monthly rent of \$1,275.00 due on the 1st of each month with a security deposit of \$637.50 and a pet damage deposit of \$637.50 paid. The parties agree that over the course of the tenancy

the rent had increased to \$1,325.00. The parties agree that on January 21, 2013 a flood occurred in the residential property as a result of an individual opening up the fire hoses on the top floor of the 36 floor building.

The landlord submits that while some of the units sustained substantial damage the dispute address was not flooded at all with the exception of the common hallway. The landlord submits the restoration service providers installed dryers in the rental unit to ensure that any water that may "wick" into the rental unit would be dried. The tenant confirms the dryers were in the rental unit and were required to be run constantly at a high decibel level.

The tenant submits that as a result of the flood in the building and the subsequent dryer installation she had to stay in hotels for a couple of nights. The tenant submits as evidence to support her claim for reimbursement of hotel costs an email sent to her from another email address. The other email address apparently had booked a room in the tenant's name for a hotel in the local area in the amount of \$157.00 for one night (January 24, 2013) and a receipt from another hotel in a neighbouring community in the amount of \$94.08 for one night (January 25, 2013).

Despite both parties providing documentation confirming that they were in contact with each other during this time, including copies of text messages between them there is no indication that the tenant identified to the landlord that she could not stay in the rental unit either because of the flood or the installation of the dryers during the temporary period for drying any potential wet areas and because of the inconsistent availability of the elevators during this time.

The parties agree that the tenant did not pay rent for the month of February 2013 and that the tenant moved out of the rental unit returning possession of the unit to the landlord on February 4, 2013. The tenant submits she had to end the tenancy because there was no end in sight to the work that needed to be completed to restore the residential property. The tenant provided her forwarding address on the move out Condition Inspection Report dated February 4, 2013.

The tenant seeks compensation for the hotel accommodation (\$251.08); for her costs of moving (\$400.00); the cost of her new rental accommodation for the month of February (\$1,900.00); and for double the amount of the security and pet damage deposits (\$2,550.00).

While the landlord provided only one page of the completed Condition Inspection Report, the tenant provided a copy of the full document. Both parties provided a copy of a handwritten note of the condition of the rental unit at the start of the tenancy.

According to the Condition Inspection Report completed on February 4, 2013 the landlord has indicated good as the condition of most items with the following exceptions:

- Some scuffs in some closets and doors;
- Garburator needs fixing;
- Chipped paint on some walls;
- Stain dark carpet in living room and totally discoloured in den;
- Blinds: few bent and dirty;
- Grout coming up around tub;
- Dirty floors and windows on the patio/balcony.

The handwritten move in Condition Inspection Report completed on March 15, 2008 indicates that there are several scratches on walls and doors throughout the unit; that the kitchen was very dirty; the carpet in the den had dark areas and appears uncleaned; that there were “5 main problem areas on carpet” but that they were shampooed; that the blinds were damaged.

The landlord seeks compensation in the amount of \$7,981.48 for the following:

1. Property Management Services – the landlord seeks \$2,500.00 for managing all appointments between the concierge; building manager; restoration company; insurance company and tenant; hiring cleaners and contractors and purchasing of materials; and administrative work for dealing with dispute resolution;
2. Lost Rent for February 2013 – for the tenant’s failure to provide sufficient notice to end the tenancy the landlord seeks \$1,325.00;
3. Cleaning – the landlord seeks compensation in the amount of \$180.00 for cleaning the rental unit after the end of the tenancy and has included a receipt for these services;
4. Labour costs - the landlord seeks \$2,800.00 for the labour costs for removing carpeting and installing new laminate flooring; replacement of garburator; kitchen faucet; prepare and paint walls and closets and one door; re-grout bathtub and replace a lock on the balcony; and
5. Materials – the landlord seeks \$1,176.48 for the materials required for the repairs noted above. The landlord has provided receipts for paint; painting supplies; and plumbing supplies.

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(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice 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.

Section 44 also allows a tenancy to end if the tenancy agreement is frustrated. In contracts, frustration is defined in Black's Law Dictionary 7th Edition as the doctrine that, if the entire performance of a contract becomes fundamentally changed without any fault by either party the contract is considered terminated.

In order for the contract, or tenancy agreement, to be terminated as the result of a flood the rental unit must be completely uninhabitable. From the evidence of both parties, in this case, I find that there is no evidence to support the tenant's position that the rental unit was uninhabitable. I therefore find the tenancy agreement was not frustrated.

As such, if the tenant wanted to end the tenancy she must follow the requirements under Section 45 that required her to provide the landlord with a 1 month notice to end the tenancy or a notice that the landlord was in breach of a material term of the tenancy agreement and that she must correct it within a reasonable time or the tenant would vacate the unit.

As the tenant has provided no evidence of a breach of a material term of the tenancy agreement or that the tenant identified a breach to the landlord and gave the landlord reasonable time to correct it, I find there was no material breach of any term in the tenancy agreement.

Therefore, I find the tenant was required to provide the landlord with a 1 month notice to end the tenancy and as the tenant gave the landlord only a 3 day notice to end the tenancy I find the tenant has failed to comply with the requirements under Section 45. I, therefore, find the landlord is entitled to compensation in the amount of \$1,325.00 for unpaid rent for the month of February 2013.

Further, as I have found the tenancy agreement was not frustrated and the tenant chose to end the tenancy on her accord I find the tenant is not entitled to any compensation for her moving costs or for the cost of her new accommodation for the month of February 2013. I dismiss this portion of the tenant's Application.

As to the tenant's claim for hotel expenses during the time that they dryers were in her rental unit, I accept that the dryers can be excessively noisy and disruptive and Section 28 of the *Act* requires a landlord to ensure the tenant receives quiet enjoyment of the rental property including freedom from unreasonable disturbances.

However, despite substantial communication between the two parties during the time period involved neither party provided any evidence that the tenant identified to the landlord that she required alternate accommodation during the drying period. As such, I find the tenant failed to take any steps that would allow an opportunity to mitigate or minimize any potential costs of alternate accommodation. I therefore dismiss this portion of the tenant's Application.

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.

In regard to the landlord's claim for cleaning I note that the Condition Inspection Report indicates that only the balcony was dirty and as such it appears that during the move out inspection the landlord determined that the tenant had met the "reasonably clean" test for the entire rental unit except the balcony. I find that as a result, the landlord has failed to provide evidence to establish that cleaning was required and I dismiss this portion of the landlord's claim.

In addition, in regard to the landlord's claim for repairs, I note that the original move in inspection notes stains and discolouration in the carpeting in both the den and the living room. While the move out inspection also indicates that these two carpets are stained, the landlord has provided no evidence to establish the difference in the carpet between the start and end of the tenancy. In addition the landlord has provided no evidence that she attempted to clean the carpets as an attempt to mitigate any loss or damage. I therefore find the landlord has failed to establish the tenant is responsible for the replacement flooring.

In regard to the preparation and painting compensation that the landlord seeks, despite the landlord's testimony that she had the rental unit painted after the start of the tenancy and she provided a copy of a contract with a painter dated March 30, 2008 this would mean that the rental unit was painted 5 years ago. Residential Tenancy Policy Guideline #40 outlines the useful life of building elements indicating that the useful life of a paint finish is 4 years and as such a paint job would be required at a cost to the landlord regardless of the condition left by the tenant.

Further, I find the landlord has failed to provide any evidence that the "scuffs" and/or "chips" were anything more than regular wear and tear. For these reasons I find the landlord has failed to establish the tenant is responsible for any costs incurred in painting the rental unit. I dismiss this portion of the landlord's claim.

In relation to the landlord's claim for property management services, I note that all of the tasks the landlord seeks compensation for are services that are the legal responsibility of the landlord and she would have had to perform these functions whether or not the tenant has breached any portions of the *Act*, regulation or tenancy agreement. As such,

I find that landlord is not entitled to any compensation for these services and I dismiss this portion of the landlord's Application.

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.

From the documentary evidence I note the landlord had been provided with the tenant's forwarding address in the Condition Inspection Report dated and signed by the parties on February 4, 2013 and as such the landlord had until February 19, 2013 to either return the deposits or file her Application for Dispute Resolution seeking to claim against the deposits.

The landlord submitted her Application to claim against the security and pet damage deposits on April 15, 2013. I find the landlord failed to comply with the requirements of Section 38(1) and the tenant is therefore entitled to double the amount of both deposits in accordance with Section 38 (6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,565.26** comprised of \$2,550.00 double the security and pet damage deposits; \$15.26 interest on the original amounts of the deposits.

I order the tenant may deduct the amount of rent owed of \$1,325.00, as determined in this decision, in partial satisfaction of this claim. I grant a monetary order to the tenant in the amount of **\$1,240.26**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were only partially successful in their Applications I dismiss both of their claims to recover the filing fee from the other party.

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 05, 2013

