



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with each party seeking a monetary order.

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

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for the cost of ½ of a humidifier; 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided are whether the tenant is entitled to a monetary order for return of 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 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on February 1 2006 for the monthly rent of \$700.00 due on the 1st of each month with a deposit of \$700.00 paid on January 21, 2006. The tenancy ended when the tenant vacated the rental unit on February 23, 2013.

The landlord submits that the original tenancy was for a 1 year fixed term and that the tenancy later continued on a month to month basis, however it also continued at the current rent on the condition the tenant would remain for an additional year. The tenant submits that there was never a fixed term and that there was no agreement to continue on a yearly basis.

The landlord submits that the deposit collected on January 21, 2006 was a security deposit and a pet damage deposit. The tenant submits the deposit was only a security deposit. The tenant confirmed she had a cat at the start of the tenancy.

The landlord submits the tenant failed to give notice to end the tenancy and he seeks compensation for lost revenue for the month of March 2013. The tenant testified that she told the landlord verbally on January 5, 2013 that she would be moving out as soon as she could find a new place. The tenant confirmed in further testimony that she never did provide the landlord with a specific date of her move out until closer to or on the day she moved out.

The tenant submits that she had to vacate the rental unit for health reasons because the landlord had failed to deal with some issues of damp and mould. The tenant provided no medical documentation.

The landlord submits the tenant had asked for him to purchase a dehumidifier during the tenancy and they had verbally agreed to share the cost. The landlord submits that the tenant has never paid her half of the purchase. The landlord seeks compensation in the amount of \$250.00 for the tenant's half. The landlord did not provide receipts.

The landlord submits that a move in condition inspection was completed when the tenant moved in but that no Condition Inspection Report was completed. He also states that the tenant moved out before a move out condition inspection could be completed. The tenant testified that no move in inspection was completed but that she was available to complete a move out inspection.

The parties agree the tenant left behind a mattress in the rental unit and a dresser in the alley. The landlord provided photographs showing some other small items left behind. The landlord submits that he had to do some general cleaning; fill holes; and some painting; and replace two closet doors. The tenant submits the closet doors were never in the rental unit when the tenancy began and that she had cleaned the unit when she left.

The tenant provided the landlord with her forwarding address in February, 2013 by text message and again by way of a letter dated March 27, 2013. The landlord confirms he received this letter on April 3, 2013. The landlord submitted his Application for Dispute Resolution seeking to claim against the deposit on June 20, 2013.

Analysis

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.

Despite the tenant's submission that she had to move due to health reasons and the landlord's failure to deal with dampness and mould problems, I find the tenant has provided no evidence that she informed the landlord of these problems and that she intended to vacate the rental unit if the situation were not corrected within a reasonable time.

As such, the tenant was bound by the provisions of Section 45(1) giving the landlord at least 1 month's notice to end the tenancy. Section 52 of the *Act* stipulates that for a notice to end tenancy is issued by the tenant to be effective the notice must be in writing; be signed and dated by the tenant; give the address of the rental unit; and state the effective date of the notice.

I find the tenant failed to give the landlord a written notice that complied with either Section 45(1) or Section 52 and as such, I find the tenant is responsible for the payment of rent for the month of March 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.

As to the landlord's claims for cleaning, garbage removal and closet door repairs I find that since the landlord has failed to provide any record of the condition of the rental unit at the start of the tenancy, he cannot claim the cost of labour for any repairs such as filling holes; painting or replacing closet doors.

From the tenant's testimony I accept the landlord had to remove both a mattress and dresser from the property and he is entitled to compensation for this work. I also accept, based on the landlord's photographs that the bathtub required some cleaning and there were small assorted items that required being discarded, with an associated labour cost.

While the landlord claimed approximately \$300.00 for all of the work he claimed I find a reasonable amount to be compensated for the removal of the mattress; dresser; assorted small items and cleaning the bathtub would \$150.00.

In regard to the landlord's claim for compensation for half the cost of the dehumidifier I find there is no evidence provided by the landlord to confirm the parties had an agreement for such a purchase. For this reason, I dismiss this portion of the landlord's claim.

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.

As the landlord acknowledged the tenant provided her forwarding address by April 3, 2013 I find he had until April 18, 2013 to either return the deposit or file an Application for Dispute Resolution to claim against the deposit. As the landlord did file his Application until June 20, 2013 I find that he has failed to meet his obligations under Section 38(1) and the tenant is entitled to double the amount of the deposits.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$574.58** comprised of \$1,400.00 double the amount of the security and pet damage deposits owed and \$24.58 interest on the original \$700.00 deposit less \$700.00 for rent owed and \$150.00 for cleaning.

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 applied to recover the filing fee of \$50.00 each from the other party and because both parties were at least partially successful I grant each party is entitled to the filing fee, however the amounts are set off against each other.

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: July 29, 2013

Residential Tenancy Branch