



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

During the hearing the Landlord and the Tenant agreed that the Landlord has been ordered to return the security deposit at a previous dispute resolution proceeding. As the issue of the security deposit has been previously resolved, I dismiss the Landlord's application to retain the security deposit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant by registered mail. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were delivered to his home by a third party. The Landlord stated that he did receive an envelope from the Tenant although he has not looked inside the envelope. I find that the Landlord was properly served with the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for cleaning the rental unit and to losses associated to when the Tenant vacated the rental unit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 01, 2012 and that the Tenant was obligated to pay monthly rent of \$1,150.00 by the first day of each month.

The Tenant stated that the tenancy officially ended on October 31, 2012 but that the rental unit was vacated on October 29, 2012. She submitted hotel receipts from hotels in the United States, in the name of her husband, dated October 30, 2012 and November 01, 2012. The receipt dated November 01, 2012 indicates that two people occupied the room. The Tenant submitted a cell phone receipt which shows that on October 31, 2012 a call was made from her cell phone in South Dakota.

The Landlord stated that the rental unit was not vacated until November 01, 2012. He stated that the Tenant's husband left the city prior to her and that he may have been the one that rented the hotel rooms on October 30, 2012 and November 01, 2012. He argued that the receipts do not establish that the Tenant also stayed in the rooms.

The Landlord stated that he had a new tenant for November 01, 2012 but the new tenant was not able to move into the unit on November 01, 2012 because the unit was still being cleaned. The Landlord submitted a letter from the individual who moved into the rental unit after this tenancy ended, in which the author declared that he moved in a week late because the previous tenant had not moved out in time and that the unit was very dirty.

The Landlord is seeking compensation for the stress he experienced as a result of the Tenant not vacating the rental unit prior to November 01, 2012 and because the Tenant breached the tenancy contract. He stated that he gave the new tenant "a few hundred bucks" because he could not move in on November 01, 2012.

The Landlord stated that the rental unit was very dirty at the end of the tenancy and that he and his wife spent approximately 12 hours cleaning the unit. He stated that the oven needed cleaning, that several surfaces needed scrubbing, that the cupboard under the sink was not cleaned out, and that several items were left behind by the Tenant, including flower pots, a vacuum cleaner, a barbecue, a washing machine, paints, a lawn mower, and railings. He stated that he left the barbecue, the lawn mower, and the washing machine for the new tenant and that he discarded the rest of the personal property.

The Tenant stated that the rental unit did not require cleaning at the end of the tenancy. She stated that they did leave a barbecue, a washing machine, and a lawn mower in the rental unit because they understood they would be used by the next tenant. She stated that they did leave laundry in the dryer but a third party retrieved that on her behalf. She stated that the Landlord told her she left cleaning supplies under the kitchen sink and she believes that may be true.

The Landlord and the Tenant agree the Landlord wrote a cheque to the Tenant, in the amount of \$575.00, on October 28, 2012, which represented a full refund of the security deposit. The Landlord stated that he wrote this cheque even though the unit was not clean on October 28, 2012 because he believed the Tenant would finish cleaning the unit. The parties agree that the Landlord placed a "stop payment" on the cheque prior to March 15, 2012.

Analysis

I favor the testimony of the Tenant, who stated that the rental unit was vacated on October 28, 2012, over the testimony of the Landlord, who stated that the rental unit was vacated on November 01, 2012.

I favored the Tenant's evidence regarding the date the rental unit was vacated, in part, because of the hotel receipts that were submitted in evidence, which shows the Tenant's husband rented hotel rooms in the United States on October 30, 2012 and November 01, 2012. While it is entirely possible that the Tenant did not stay in those rooms with her husband, the evidence shows that that two people occupied the room on November 01, 2012. While these receipts do not conclusively demonstrate that the Tenant was with her husband on those nights, they do corroborate the testimony of the Tenant to some degree.

I favored the Tenant's evidence regarding the date the rental unit was vacated, in large part, because of the cell phone receipts that were submitted in evidence, which shows that a phone call was made in South Dakota on October 31, 2012 from the Tenant's cell phone. I find this evidence strongly corroborates the Tenant's testimony.

I have placed little weight on the letter submitted by the Landlord, which the Landlord stated was written by the individual who moved into the rental unit after this tenancy ended, in which he declared he could not move into the rental unit because the Tenant had not moved out in time. I find that this letter is far less compelling than the documentary evidence submitted by the Tenant as it clearly contradicts the documentary evidence created by unbiased third parties.

Section 67 of the *Act* authorizes me to order a tenant to pay a landlord compensation if the landlord suffers a loss as a result of the Tenant failing to comply with the *Act* or the tenancy agreement. As the Landlord has failed to establish that the Tenant did not move out of the rental unit prior to November 01, 2012, I find that the Landlord has submitted insufficient evidence to show that the incoming occupant was prevented from moving into the rental unit on November 01, 2012. As the Landlord has not shown that the Tenant prevented the incoming occupant from taking possession of the rental unit on November 01, 2012, I find that the Tenant is not obligated to compensate the Landlord for any losses arising from the new tenancy not beginning on time.

Section 28 of the *Act* stipulates that a tenant is entitled to the quiet enjoyment of the rental unit, including freedom from unreasonable disturbances. The *Act* does not

provide a landlord with the same protection. I therefore find that the Landlord is not entitled to compensation for any stress he experienced as a result of any difficulties he experienced with the Tenant during the tenancy or after the tenancy ended.

In some circumstances a landlord would be entitled to compensation for lost revenue if a tenant did not give proper notice to end a tenancy and the landlord subsequently lost revenue for the following month. As this Landlord had a new occupant for November 01, 2012 and the Landlord has failed to establish that the Tenant prevented the new tenancy from proceeding on November 01, 2012, I find that the Landlord is not entitled to compensation for lost revenue in these circumstances.

I find that the Landlord submitted insufficient evidence to show that the rental unit required cleaning at the end of the tenancy. In reaching this conclusion I was influenced, in part, by the absence of photographs that corroborates the Landlord's testimony that the rental unit required cleaning and that refutes the Tenant's testimony that the rental unit did not require cleaning. As the need to clean is often highly subjective, photographs are often extremely helpful in determining whether a rental unit was left in reasonably clean condition when opposing parties cannot agree.

In determining whether the rental unit was left in clean condition I placed little weight on the letter from the incoming tenant. As I have found his letter to be unreliable in regards to the rental unit not being vacated on time, I am hesitant to rely on his assessment of the condition of the unit, particularly when he is not present at the hearing to explain how he reached this conclusion.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the rental unit required cleaning. I therefore dismiss the Landlord's application for compensation for cleaning the rental unit.

Conclusion

I find that the Landlords application has been without merit and I dismiss the application to recover the filing fee. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 16, 2013