



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on May 10, 2013. I am satisfied that the landlord served this package and the tenant served her written evidence package to the landlord in accordance with the *Act*. The landlord provided no written evidence, other than what he inserted in the application for dispute resolution.

Preliminary Issue – Landlord's Application to Retain the Tenant's Security Deposit

The tenant entered into written evidence a copy of a May 10, 2013 decision of another Arbitrator appointed under the *Act*. In that decision, the Arbitrator made a final and binding decision and Order requiring the landlord to pay the tenant \$450.00, constituting double the amount of her \$200.00 security deposit plus the recovery of the tenant's \$50.00 filing fee for that application. The Arbitrator made that decision because the landlord had not complied with the provisions of section 38 of the *Act*, requiring the landlord to take action within 15 days of receiving the tenant's forwarding address in writing to return the security deposit in full or apply for authorization to retain that deposit. In that decision, the Arbitrator also accepted that this tenancy ended on November 4, 2012, when the tenant vacated the rental premises.

As I noted at the beginning of the hearing, the legal doctrine of *res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a

defendant from raising any new defense to defeat the enforcement of an earlier judgment. A final judgment on the merits bars further claims by the same parties based on the same cause of action. It also precludes relitigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy.

The evidence in this case is that the tenant made a previous application under section 38 of the *Act* to obtain a return of double her security deposit from the landlord. The Arbitrator considered that claim on its merits with both parties in attendance and issued a final and binding decision and monetary Order in the tenant's favour. As noted at the hearing, I therefore find that the landlord's current application for authorization to retain the tenant's security deposit is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy for a basement suite commenced on September 1, 2012. Monthly rent was set at \$500.00, payable in advance on the first of each month. The tenant paid a \$200.00 security deposit on August 28, 2012.

The landlord's application requested a monetary Order of \$500.00 for unpaid rent that the landlord claimed was owing from October 2012. However, as noted below in the Details of the Dispute section of the landlord's application, the landlord also claimed that the tenant ended this tenancy without providing adequate notice to do so.

MG moved out of the basement in mid November without giving one month notice and did not pay the rent for the month of October. While leaving she did not handed the key to us instead she put it in the mailbox. We only came to know about it when we opened the mailbox. Then we checked the basement and found it was empty and was not even cleaned.

The landlord provided no other written evidence.

The tenant testified that she paid \$500.00 for her October 2012 rent to the landlord. She entered into written evidence a copy of her on-line bank transaction statement, which she maintained confirmed that she withdrew \$500.00 on October 3, 2012, for payment of her rent to the landlord. She gave undisputed sworn testimony that the

landlord did not issue any receipts for any of her rent payments during this tenancy. She said that she voiced her objections to the lack of cable and internet service from the landlord when she paid her rent on October 5, 2012. She testified that the landlord's agent told her that she could move out at the end of October if she was not satisfied with the services being provided by the landlord. She said that the agent told her that she could stay for October as she had paid her rent for that month. The tenant maintained that she had an oral agreement with the landlord (or his agent) to end this tenancy by October 31, 2012. When she could not obtain a truck to remove all of her larger possessions from the rental unit until November 4, 2012, she said that the landlord agreed to let her keep these belongings in the rental unit until that date without charge.

The landlord's agent confirmed that no receipts were issued for the tenant's rent payments during this tenancy. She claimed that the landlord had not agreed to let the tenant vacate the rental unit by the end of October 2012. She testified that the rental unit needed cleaning when the tenancy ended. She testified that she and the landlord posted advertisements for the rental of this suite commencing in December 2012.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

The *Act* requires a landlord to issue receipts to tenants. In this case, the landlord's failure to issue any receipts or provide any written evidence in the form of a rent ledger calls into question the landlord's claim that the tenant did not pay her rent for October 2012. The landlord's agent was correct in noting that the document provided by the tenant does not necessarily demonstrate that the \$500.00 withdrawn by the tenant on October 3, 2012 was used by the tenant to pay her rent to the landlord. I am not satisfied that the landlord has provided adequate evidence to demonstrate that rent is owing from October 2012. No 10 Day Notice to End Tenancy for Unpaid Rent was issued by the landlord to the tenant. I find that the tenant's account of what transpired matches more closely with the limited written evidence provided and the previous decision issued by the previous Arbitrator than the landlord's claim that the tenancy ended in mid-November 2012 without the landlord being aware that the tenant was planning to end her tenancy. On a balance of probabilities, I find it more likely than not that the tenant paid her October 2012 rent. For these reasons, I dismiss the landlord's

application for a monetary award for unpaid rent for October 2012, without leave to reapply.

Although the landlord's application specifically cited unpaid rent from October 2012, his application also noted that the tenant left without providing adequate notice and did not yield vacant possession of the rental unit until sometime in November 2012. As such, I find that I am also able to consider the landlord's associated claim that he is entitled to recover unpaid rent owing from November 2012.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for November 2012, the tenant would have needed to provide her notice to end this tenancy before October 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing.

In this case, the tenant asserted that the landlord had asked her to end her tenancy by the end of October 2012 and that she had an oral mutual agreement to end her tenancy by that date. As noted at the hearing, the *Act* does not allow a landlord to end a tenancy on the basis of an oral request to do so. The *Act* requires that any notice to end tenancy provided by a landlord must be in writing on the prescribed forms created by the Residential Tenancy Branch (the RTB). Any mutual agreement to end a tenancy must also be in writing.

Since the tenant did not receive any official notice to end her tenancy and did not provide a written notice to end this tenancy of her own, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

There is undisputed evidence that the tenant did not pay any rent for November 2012, and remained in the rental unit until at least November 4, 2012. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord and his agent testified that advertisements to seek a new tenant for this rental unit were not started until December 2012 when the landlord started posting advertisements in local Laundromats and commercial locations. No copies of these

advertisements were entered into written evidence nor was any evidence provided as to efforts that the landlord took to seek a new tenant on any housing rental websites. I find on a balance of probabilities it unlikely that the landlord did not know that the tenant was planning to end her tenancy until the landlord discovered that the rental unit had been vacated. I find that the landlord significantly delayed attempting to locate a tenant for November 2012, and, as a result, has not taken adequate measures to mitigate the tenant's losses. As such, I find that the landlord has not met his responsibility under section 7(2) of the *Act* to minimize the tenant's loss arising out of unpaid rent for November 2012. I allow the landlord a monetary award for the first four days of November 2012, when the tenant remained in possession of the rental unit, keeping some of her possessions in the rental unit. I issue a monetary Order in the landlord's favour in the amount of \$66.67 (i.e., $\$500.00 \times 4/30 = \66.67).

Due to the landlord's very limited success in this application, I make no order with respect to the landlord's application to recover his filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$66.67, an amount which allows the landlord to recover unpaid rent for the first four days of November 2012. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of the landlord's monetary claim and his application for the recovery of his filing fee without leave to reapply.

I dismiss the landlord's application to retain the tenant's security deposit as this matter has already been conclusively decided and cannot be decided again.

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: August 09, 2013

Residential Tenancy Branch

