



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, 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 and for damage to the unit, site or property 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 parties agreed that on April 13, 2013, they signed a mutual agreement to end this tenancy by April 30, 2013. The tenant yielded vacant possession of the rental unit to the landlord and surrendered his keys to the rental premises on May 21, 2013. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord on May 15, 2013. I am satisfied that the landlord served his hearing package to the tenant and that both parties served one another with their respective evidence packages in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on August 1, 2012 by way of an oral tenancy agreement. Monthly rent was set at \$850.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$425.00 security deposit paid on or about July 20, 2012.

The landlord's application for a monetary award of \$3,671.44 included requests for the recovery of \$850.00 in unpaid rent from April 2013 and an estimated \$2,821.44 in repairs to the walls of the shared laundry room that the landlord claimed the tenant damaged during the course of this tenancy.

Both parties agreed that the tenant provided the landlord with an \$850.00 rent cheque for April 2013. However, on or about April 10, 2013, the tenant cancelled payment on that cheque. The tenant agreed that he did not pay rent for April 2013. The landlord has not applied for the recovery of unpaid rent for any portion of May 2013, even though the tenant remained in the rental unit beyond the April 30, 2013 date identified as the end date to this tenancy on their mutual end to tenancy agreement.

The landlord entered into written evidence an undated, unsigned estimate from a restoration company in the amount of \$2,821.44. This estimate included labour and materials for a service call, two sheets of drywall, two gallons of paint, a new access panel for access to the mechanical area, and 38 hours of labour for the repair and painting of an area in the laundry room. The landlord provided written, photographic and sworn testimony that the tenant damaged this area during this tenancy.

Although the parties conducted a joint move-in condition inspection on or about August 1, 2012, the landlord did not prepare a report of this inspection nor did he send a copy of a move-in condition inspection report to the tenant. The landlord did not send the tenant notices to conduct a joint move-out condition inspection of these premises. While the landlord conducted his own move-out condition inspection, he did not prepare a move-out condition inspection report. The landlord testified that the laundry room in question was last painted about three years before this tenancy ended.

The tenant provided sworn testimony and written evidence that the relationship with his landlord had deteriorated in April 2013, to the point where he believed he was justified in cancelling his April 2013 rent cheque. At the hearing, he confirmed that he had not applied for authorization to withhold any rent owed to the landlord.

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. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the tenant maintained that much of the damage to the laundry room was likely already in place before his tenancy began. He also entered written evidence that the landlord had not properly maintained the water connections to the washing machine in the laundry area and, as such, the landlord's own failure to conduct proper maintenance led to any damage that did arise during this shared space during his tenancy. The failure of the landlord to provide any joint move-in condition inspection report makes it very difficult for the landlord to demonstrate that the damage did arise during the course of this tenancy and that the tenant is responsible for that damage.

Separate from the above-noted deficiencies in the landlord's claim, the landlord testified that he has not actually conducted any repairs on the laundry room. As such, I find that the landlord has failed to demonstrate any actual monetary losses as a result of the tenant's actions, even if I were to accept that the tenant were responsible for damage to the laundry room. Under these circumstances, I dismiss the landlord's claim for a monetary award for damage arising out of this tenancy without leave to reapply.

The tenant has not disputed the landlord's claim that the tenant cancelled his April 2013 rent cheque. The tenant also admitted that he has not paid any rent to the landlord for April 2013 and has not obtained an order from an Arbitrator appointed under the *Act* to withhold his April 2013 rent.

In the tenant's written evidence and in his sworn testimony, he maintained that the landlord's actions were so unprincipled that he was justified in ending this tenancy earlier than would normally be allowed under the *Act*. In fact, by agreeing to sign the mutual end to tenancy agreement, both parties agreed that the tenancy was to end on April 30, 2013. Despite the tenant's failure to abide by the terms of the mutual agreement to end tenancy he signed, this agreement also confirmed that the existing agreement continued until April 30, 2013. This agreement included the tenant's responsibility to continue paying rent until the end of the tenancy.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." As the tenant did not apply for a rent reduction, I find that the correct monthly rent owing for April 2013 was \$850.00, the amount agreed to by the parties when this tenancy commenced. Based on the evidence before me, I find

that the landlord is entitled to a monetary award of \$850.00 for unpaid rent owing for April 2013.

As noted at the hearing, section 72(2)(a) of the *Act* allows me to order the landlord to retain the tenant's security deposit in partial payment of rent that is owing from this tenancy. I order the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the unpaid rent owing from this tenancy. No interest is payable over this period.

As the landlord has been successful in this application, I allow the landlord to recover his \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and his filing fee from the tenant and to retain the tenant's security deposit:

Item	Amount
Unpaid April 2013 Rent	\$850.00
Less Security Deposit	-425.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$475.00

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 landlord's claim for damage arising out of this tenancy without leave to reapply.

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 16, 2013

Residential Tenancy Branch

