



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, RPP

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss and for the return of personal property belonging to the Tenant.

The Tenant stated that she served her Application for Dispute Resolution, the Notice of Hearing, and documents she wishes to reply upon as evidence to the Respondent with the initials "D.N.", via registered mail, on June 07, 2013. The male Agent for the Landlord acknowledged that these documents were received by both Respondents and they were accepted as evidence for these proceedings.

The male Agent for the Landlord stated that documents served in response to the Tenant's Application for Dispute Resolution were sent to the service address provided by the Tenant, via registered mail, on August 15, 2013. The Tenant stated that she has moved from that service address but that these documents were forwarded to her. As the Tenant received the documents, I accept them as evidence for these proceedings.

The male Agent for the Landlord stated that the Landlord served the Landlord's Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to reply upon as evidence to the service address provided by the Tenant, via registered mail, on August 27, 2013. The Tenant stated that she has moved from that service address and that these documents were not forwarded to her.

The Tenant provided the Landlord with a new service address at the hearing on September 12, 2013.

The hearing on September 12, 2013 was adjourned for the purposes of allowing the Landlord to re-serve the Tenant with the Landlord's Application for Dispute Resolution and documents the Landlord wishes to reply upon as evidence.

The hearing was reconvened on October 29, 2013 and was concluded on that date. At the reconvened hearing the Tenant acknowledged receipt of the Landlord's Application for Dispute Resolution and documents the Landlord wishes to reply upon as evidence, and they were accepted as evidence for these proceedings.

At the reconvened hearing the Tenant stated that she sent documents to the Landlord, via registered mail, on October 23, 2013. The male Agent for the landlord stated that the documents were received three days ago and that the Landlord does not require more time to consider those documents. They were accepted as evidence for these proceedings.

Both parties were represented at both hearings. 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 submissions to me.

Preliminary Matter

The Landlord claimed compensation of \$1,088.00 for "house damage". The Landlord was advised that this portion of his application for compensation for damages to the rental unit was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because his Application for Dispute Resolution did not provide sufficient particulars of his claim for compensation for damages, as is required by section 59(2)(b) of the *Act*.

In reaching this conclusion, I was strongly influenced by the absence of a list of house damages that shows how the house was damaged and how much compensation the Landlord is claiming for each damaged item. I find that proceeding with the Landlord's claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims.

Issue(s) to be Decided

Is the Tenant entitled to a monetary Order for property taken from the rental unit and/or is there a need to issue an Order requiring the Landlord to return personal property?

Is the Landlord entitled to compensation for damage to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that the this tenancy began on October 01, 2012; that the Tenant and a co-tenant signed a tenancy agreement; that the Tenant and co-tenant were required to pay monthly rent of \$900.00 by the first day of each month; and that the co-tenant vacated the rental unit in November or December of 2012.

The Tenant stated that on April 03, 2013 she verbally informed the female Agent for the Landlord that she was moving out and that her mother was moving in. She stated that she did move out on April 03, 2013.

The female Agent for the Landlord stated that the Tenant did not inform her that her mother was moving in, but she did inform her that her mother would be paying the rent for April. She stated that she did not learn that the Tenant had vacated the rental unit and that her mother had moved into the rental unit until May of 2013, when the mother paid the rent for May. She stated that she informed the mother that she would need to enter into a tenancy agreement for the rental unit and that she would need to pay a security deposit, neither of which was done.

The Landlord stated that in the first week of April of 2013 he learned the Tenant had vacated the rental unit; that in the second week of April he learned that the mother wished to reside in the rental unit; that they discussed the possibility of entering into a tenancy agreement with the mother but he did not do so as she could not produce identification; that he knew the mother had paid rent for May of 2013; and that the female Agent for the Landlord told him that the rent was being paid by the mother on behalf of the Tenant.

The Witness for the Tenant stated that she moved into the rental unit on April 03, 2013 when her daughter moved out; that she discussed moving into the rental unit with the female Agent for the Landlord on April 03, 2013 or April 04, 2013; that she was unable to provide the Landlord with identification, as she did not have any; that she and the Landlord signed a tenancy agreement; that she returned the agreement to the Landlord at his request and it was never returned; that she paid rent for April and May of 2013; that she paid a security deposit of \$450.00 at the end of April; and that she vacated the rental unit at the end of May of 2013.

The Tenant submitted a receipt that indicates rent was paid for April and that a security deposit was due by April 15, 2013.

The Tenant stated that when her mother moved out of the rental unit on May 01, 2013, the Tenant moved a television and several boxes containing personal items out of the rental unit into an unlocked, detached garage located on the residential property; that when she returned to recover the property on May 04, 2013 or May 05, 2013 it was missing; and that the female Agent for the Landlord informed her that everything left at the property had been discarded. The Tenant is seeking an Order requiring the Landlord to return the personal items she left in the garage. He stated that rent was not paid for May of 2013.

The male Agent for the Landlord stated that there were no boxes or television in the garage when he inspected the residential property after the Tenant's mother vacated the rental unit. He believes he inspected the rental unit on May 04, 2013 or May 05, 2013. He stated that the photographs submitted in evidence are photographs of the

personal property left in the rental unit, none of which was located in the garage. The Landlord submitted a credit card statement that indicates disposal fees were paid on May 04, 2013.

The female Agent for the Landlord stated that this building is more like a shed than a garage.

The Landlord is seeking compensation for replacing 5 window screens. The female Agent for the Landlord stated that five new window screens were supplied during the tenancy. The Tenant recalled four new window screens were supplied during the tenancy. The female Agent for the Landlord stated that at the end of the tenancy three of the screens were missing and two were damaged. The Tenant stated that all of the screens were in place and undamaged at the end of the tenancy.

The Landlord is seeking compensation for replacing a deck railing that the Landlord alleges was completely missing at the end of the tenancy. The male Agent for the Landlord stated that the railing was in good repair and he speculates that the railing was burned at a burn site on the residential property. The Tenant stated that the railing was in poor repair; that some parts of the railing had fallen off and were laying on the ground at the end of the tenancy; and that the majority of the railing was in place at the end of the tenancy.

The Landlord is seeking compensation for repairing a sewer line that the Landlord alleges the Tenant broke when they had an excavator working on the property. The female Agent for the Landlord stated that the sewer began backing up approximately one week after the excavator was on the site. The male Agent for the Landlord stated that the Landlord eventually learned that the sewer line had been broken and was clogged with dirt.

The Tenant agreed that her co-tenant had an excavator doing landscaping on the residential property but she had no knowledge of a pipe being broken as a result of the landscaping.

The Landlord is seeking compensation for unpaid rent/lost revenue for May and June of 2013, in part, because the Tenant did not give proper notice of her intent to vacate and, in part, because of the repairs needed to prepare the rental unit for a new occupant. The male Agent for the Landlord stated that all the repairs to the rental unit were completed by the end of May.

Analysis

On the basis of the undisputed evidence, I find that the Tenant and the Landlord entered into a tenancy agreement that required her to pay monthly rent of \$900.00.

I find that the Tenant has submitted insufficient evidence to establish that the Tenant's mother subsequently entered into a tenancy agreement with the Landlord. In reaching

this conclusion I was heavily influenced by the absence of documentary or other compelling evidence that refutes the Landlord's testimony that they did not enter into a tenancy agreement or that corroborates the mother's testimony that they did enter into a tenancy agreement. While I accept that the parties did discuss the possibility, I am not convinced that an agreement was reached.

I do accept that the mother resided in the rental unit and paid rent, however I find it more likely she was there at the invitation of the Tenant and was, therefore, simply an occupant in the rental unit. I therefore find that she had no rights or obligations in regards to this rental unit.

In determining this matter I placed little weight on the receipt that was issued that indicates the mother has until April 15, 2013 to pay a security deposit. In my view this simply confirms the undisputed evidence that the parties were discussing the possibility of entering into a tenancy agreement.

I find that the Tenant failed to comply with section 45 of the *Act* when she vacated the rental unit on April 03, 2013 without proper written notice. As the Tenant did not properly end the tenancy and she permitted her mother to occupy the rental unit, I find that she was obligated to pay rent while the rental unit was occupied and that she remained liable for any damages to the rental unit that occurred while the unit was occupied.

I find that the testimony provided by the participants regarding rent/occupancy for May of 2013 was contradictory. The Landlord, the female Agent for the Landlord, and the mother of the Tenant all stated that the mother paid rent for May of 2013. Conversely, the male Agent for the Landlord stated that rent was not paid for May of 2013. Although it is clear that at least one party representing the Landlord is wrong about whether rent was paid for May of 2013, I am unable to determine which of the testimony is correct. As three people testified that rent was paid for May and only one person testified it was not paid for May, I find that there is insufficient evidence to conclude that rent was not paid for May. I therefore dismiss the Landlord's claim for unpaid rent/lost revenue for May of 2013, even though the evidence will show that the mother moved out of the unit on May 01, 2013.

The Tenant and the male Agent for the Landlord both testified that the mother moved out of the rental unit on May 01, 2013. This is not disputed by any party and is corroborated by the credit card receipt that indicates property was disposed of on May 04, 2013. While this is not sufficient to convince me that rent was not paid for May of 2013, I am satisfied that the Tenant or her mother did not occupy the unit in May.

On the basis of the undisputed evidence that all repairs to the rental unit were complete by the end of May of 2013, I dismiss the Landlord's claim for lost revenue for June of 2013. As the rental unit was vacant and repairs were being completed in May, I find that the need to repair any damage caused by the Tenant did not prevent the Landlord from showing the rental unit to perspective tenants and from making arrangements to

rent the unit for June 01, 2013. I therefore dismiss the claim for lost revenue from June of 2013.

I find there is insufficient evidence to conclude that the Landlord is in possession of any personal items the Tenant left in the detached building on the residential property, which the Tenant refers to as a garage. While I can find no reason to discount the Tenant's testimony that she moved property to the building, I can also find no reason to discount the male Agent for the Landlord's testimony that no personal property belonging to the Tenant was located in the building when the building was inspected in early May of 2013. On the basis of the undisputed evidence that the building was not locked, I find it entirely possible that they are both telling the truth and that the property was taken by a third party. As there is no evidence the Landlord is currently in possession of the Tenant's property, I dismiss the Tenant's application for an Order requiring the Landlord to return the property.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord has submitted insufficient evidence to show that window screens were damaged during this tenancy or that they were missing at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, a condition inspection report, or a receipt to show they were replaced, that corroborates the Landlord's claim that they were missing/damaged or that refutes the Tenant's claim that they were not missing/damaged. I therefore dismiss the Landlord's claim for the cost of replacing and/or repairing window screens.

I find that the Landlord has submitted insufficient evidence to show that deck railing was missing at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a condition inspection report, that corroborates the Landlord's claim that the railing was missing or that refutes the Tenant's claim that it was not missing. I therefore dismiss the Landlord's claim for the cost of replacing the railing.

I find that the Landlord has submitted insufficient evidence to show that the Tenant damaged the sewer line during the tenancy. Although it is possible that the excavator damaged the sewer line, it is also possible that the sewer line had been previously damaged and that the timing of the sewer problems was merely coincidental. In the absence of evidence, such as photographs or expert evidence from an unbiased party, that clearly shows the blockage was the result of a recent break, I find that I have insufficient evidence to conclude that the Tenant damaged the line. I therefore dismiss the Landlord's claim for the cost of repairing the sewer line.

I find that the Landlord has failed to establish the merit of the Application for Dispute Resolution and I dismiss the Landlord's application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

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: October 30, 2013

Residential Tenancy Branch

