



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authority to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recover the amounts claimed against the tenant?
2. Are the landlords authorized to retain the security deposit?

Background and Evidence

The tenancy commenced April 1, 2012 and after March 31, 2013 the tenancy was on a month-to-month basis. The monthly rent of \$800.00 was payable on the 1st day of every month. The tenant paid a security deposit of \$400.00. The tenant paid only \$400.00 toward the rent due on June 1, 2013 and on June 3, 2013 the landlord posted a 10 day Notice to End Tenancy for Unpaid Rent indicating \$400.00 in rent was outstanding. The tenant did not pay the outstanding rent and vacated the rental unit on June 15, 2013. A move-out inspection report was prepared with the tenant on June 15, 2013. The inspection report indicates the unit was in satisfactory condition. The tenant would not authorize the landlord to retain the security deposit.

The landlord seeks to recover the unpaid rent of \$400.00 for the month of June 2013. The tenant acknowledged that she withheld the amount of the security deposit from her June 2013 rent because she thought the landlord would not return it to her. The tenant claimed she advised the landlord to take the rest of the rent from the security deposit.

The tenant was of the position she did not owe the landlord the balance of the rent because she had complied with the 10 Day Notice and vacated the rental unit.

The landlord is also seeking to recover carpet cleaning costs of \$185.80 as well as cleaning and painting of the unit in the amount of \$246.75. The landlord explained that the tenant smoked in the unit and these measures were necessary to remove the odor of smoke. The tenancy agreement prohibited the tenant from smoking in the unit or anywhere on the property. The landlord claimed that he observed the tenant smoking in her car on the street and on the day she moved out she smoked in front of the landlord in an attempt to antagonize the landlord. The landlord explained that the unit smelled of smoke during the move-out inspection but that the report indicates the condition of the unit was satisfactory as the relationship between the parties was acrimonious and he wanted the inspection over with as soon as possible. The landlord, however, is of the position that he has provided other evidence showing the tenant smoked in the unit.

The tenant denied smoking in the unit or being a smoker. The tenant submitted that the other tenant's complaints of her smoking were likely the result of marijuana smoke coming from another unit. The tenant stated that she only burned scented oils in the unit. The tenant was of the position she should not be held responsible for cleaning or painting as she left the unit pristine and the move-out inspection report indicates it was not in need of cleaning or painting.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Unpaid rent

The Act provides that a tenant must pay rent when due in accordance with the terms of the tenancy agreement. The Act provides for ways a tenant may end the tenancy legally. A month-to-month tenancy may be ended by the tenant by way of the tenant giving the landlord at least one full month of written notice to be effective on a date that is at least one month after the notice and on the day before rent is due. Where an effective date given in a notice to end tenancy is incorrect the Act provides that the effective date automatically changes to comply.

On May 22, 2013 the tenant wrote an email to the landlord that she was giving her notice to end the tenancy effective June 15, 2013. Although the tenant gave her notice by way of an email the landlord stated that the emailed communication was accepted in

lieu of written notice. I note that in the evidence presented to me, the landlord responded to the tenant's notice, via email, by advising the tenant she had to pay the full rent due for June and that she would be entitled to occupy the suite until June 30, 2013.

Since the tenant wanted to end the tenancy any notice to end tenancy she gave to the landlord in May 2013 would required an effective date of June 30, 2013 and for the tenant to pay \$800.00 on June 1, 2013 as the landlord correctly advised her.

The came to an end much sooner than June 30, 2013 due to the tenant's failure to pay the rent that was due on June 1, 2013 and the issuance of a 10 Day Notice by the landlord. Vacating the rental unit in compliance with the 10 Day Notice does not exempt the tenant from meeting her obligations under the Act. In other words a tenant cannot benefit by having the effective date changed to a sooner date by violating the Act. It remains that the landlord's were entitled to a full month's notice and the full rent for June 2013 and the tenant failed to give this to the landlords.

Furthermore, the Act provides that a tenant must not apply a security deposit to rent owed without the consent of the landlord. The tenant did not have the landlord's consent in this case.

For the reasons I have provided above, I award the landlord unpaid rent of \$400.00 for the month of June 2013 as requested.

Cleaning and painting

The Residential Tenancy Regulations provide that a condition inspection report is the best evidence of the condition of the rental unit during a dispute resolution proceeding unless a party has a preponderance of evidence to the contrary.

It is undisputed that the move-out inspection report indicates the rental unit is in satisfactory condition and does not specify the need for cleaning and painting. Therefore, it is before me to consider whether the landlord has sufficient evidence to contradict what is reflected on the move-out inspection report. The landlord's burden of proof is based on the balance of probabilities.

The landlord included the following documentation in support of his position the tenant smoked in the property:

- A letter dated April 30, 2012 stating cigarette smoke was seen coming from the rental unit on April 28, 2012.
- A caution notice dated April 30, 2013 with respect to cigarette smoke on the premises on April 27, 2013.
- An email dated May 18, 2013 from another tenant in the building to the landlord complaining that the tenant is smoking and attempting to mask it with sickly perfume.
- An email dated May 22, 2013 from the landlord to the tenant advising her that they have received a complaint about smoking and the attempt to mask the smell.
- An email dated May 26, 2013 from another tenant in the building to the landlord complaining about the tenant smoking.

The tenant did respond to the May 22, 2013 email from the landlord by way of an email whereby she acknowledged burning scented oils and pointed to “weed smoke” coming from elsewhere. I note the tenant does not specifically deny being a smoker or smoking within the unit; however, the tenant does state, however, that the landlord is welcome to enter her unit, as long as she is home.

The landlord responded by way of an email by indicating “we will not be coming in to your suite prior [to the move out inspection] unless we are notified again that you or your guest is smoking in the building.”

I found the above documentation coupled with the landlord’s specific testimony about where and when he saw the tenant smoking satisfied me that, on the balance of probabilities, the tenant smoked in the unit or allowed smoking to take place in the unit. It is important to note that a tenant is also responsible for the actions of her guests so that the tenant would be responsible for removal of the smoke smell if her guests smoked in the unit.

I find that the landlord’s efforts to clean and deodorize the carpeting and to clean and paint the walls were necessary to remove the smell of smoke caused by the tenant’s actions. I also find the amounts claimed by the landlord for these remedies are very reasonable. Therefore, I grant the actual amounts incurred by the landlords for cleaning, deodorizing and painting.

I authorize the landlords to retain the security deposit in partial satisfaction of the unpaid rent. I further award the landlords the \$50.00 filing fee they paid for the Application.

In light of the above, the landlords are provided a Monetary Order calculated as follows:

Unpaid rent: June 2013	\$ 400.00
Carpet cleaning and deodorizing	185.80
Wall cleaning and painting	246.75
Filing fee	50.00
Less: security deposit	<u>(400.00)</u>
Monetary Order	\$ 482.55

To enforce the Monetary Order it must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$482.55 to serve upon the tenant and enforce as necessary.

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: September 27, 2013

Residential Tenancy Branch

