



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent and for compensation under the Act and the tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on September 1, 2011, with the Landlord and the Tenant signing a written tenancy agreement. The Tenant was to pay the Landlord \$650.00 per month, due on the first day of each month. No security deposit was paid by this Tenant.

The rental unit apparently consists of a separate suite from a residential house. For some period of time, the Tenant's son and his family had been living in the house with the Tenant. When a separate suite became available at the property, the Tenant moved into this suite (the subject rental unit) and entered into her own tenancy agreement with the Landlord.

Apparently the Tenant often paid her rent payment to her son or her son's spouse and they paid the Landlord for both rental units. I explained to the Tenant and her son during the hearing that although they often combined their rent in one cheque given to the Landlord this did not mean they were under the same tenancy agreement. In any event, the Tenant agreed she had entered into her own separate tenancy agreement with the Landlord.

The Landlord had a separate agreement with the son of the Tenant for payment of the utility bills. The Landlord testified that the Tenant was required to pay 25% of the bill and

the son was to pay 75%. The parties informed me that there had already been one hearing with the son for his portion of the utility bills.

It appears there were problems with late payments during the course of the tenancy, between both the Tenant and her son. At one point the Tenant and the Landlord agreed to a mutual end to the tenancy, but this agreement was waived by the parties and the tenancy was reinstated.

In February of 2013, the Landlord issued a 10 day Notice to End Tenancy to both the Tenant and her son for unpaid rent for February 1, 2013, and for \$313.31 in unpaid utilities.

The Landlord scheduled an outgoing condition inspection report for February 28, 2013; however, the Tenant did not attend at this inspection.

The Landlord provided testimony and evidence that sometime toward the end of February 2013, the Tenant vacated the subject rental unit (and the son and his family apparently vacated the house). No rent had been paid for the subject rental unit for February of 2013.

The Landlord now claims for two months of rent for February and March of 2013, in the amount of \$1,300.00, as she alleges the rental unit was too dirty and messy to rent for March 1, 2013, and that the Tenant did not give her notice she was leaving the rental unit.

The Landlord claims \$90.00 for carpet cleaning in the rental unit and for \$75.00 for deep cleaning and some dusting in the subject rental unit. The Landlord testified she had spent quite a few hours wiping down cupboards, dusting venetian blinds, and cleaning in the rental unit. The \$75.00 amount claimed also includes removal of a large television set and yard debris. The Landlord is also claiming for \$141.25 in utilities, as a portion against this Tenant.

In reply, the Tenant acknowledged she had left behind a television.

The Tenant disagreed with having to pay two months of rent. The Tenant testified she did quite a bit of cleaning in the rental unit, and had done dusting and wiping as well. The Tenant acknowledged she had not had the carpet cleaned.

The son of the Tenant argued that the Tenant left due to the 10 day Notice to End Tenancy for unpaid rent and therefore they did not have to give the Landlord a notice to end tenancy. The Tenants emailed the Landlord on or about February 18 and informed her they were moving out before the end of the month.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this instance I find the Landlord has proven the Tenant breached the *Act* and tenancy agreement by failing to pay rent for the month of February 2013.

I do not find the Landlord has proven the rental unit was in too poor a condition to rent for the following month, due to anything the Tenant had done. The Landlord has claimed for minimal cleaning costs and no damage, and has provided no pictures in evidence or other evidence that would indicate to me it could not have been rented the following month. Furthermore, the tenancy ended by operation of section 46 of the *Act* on the effective day of the Notice. The Landlord did mitigate her loss by advertising the rental unit early; nevertheless, I do not find the Tenant was required to give her notice in this particular instance as the tenancy ended by operation of the *Act*.

I do find the Landlord has established the Tenant breached section 37 of the *Act* and their tenancy agreement by failing to leave the rental unit in a reasonably clean state and free of her possessions. The Tenant acknowledged she had not had the carpets cleaned and left an old TV behind and the Landlord had to have this removed.

I find the Landlord has insufficient evidence to prove the Tenant was required to pay 25% of the utilities. There was simply not enough evidence to prove the Tenant had agreed to this or was required to pay this amount under the tenancy agreement.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the testimony and evidence, and a balance of probabilities, I find that the Landlord has established a total monetary claim of **\$865.00** comprised of one month of rent, the carpet and rental unit cleaning and the \$50.00 fee paid for this application.

I grant the Landlord an order under section 67 for the balance due of **\$865.00**.

This order must be served on the Tenant, and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent for one month, and did not clean the carpet or the rental unit in accordance with the requirements of section 37 of the Act. The Landlord is granted a monetary order for \$865.00 for losses due to the Tenant's breaches of the Act and tenancy agreement.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2013

Residential Tenancy Branch

