



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and compensation for damage to the rental unit. 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.

Preliminary and Procedural Matters

The landlord named two tenants in filing this Application but sent only one hearing package to the male tenant. As an applicant must serve each respondent I amended the Application for Dispute Resolution to exclude the female tenant who was not served.

The tenants stated that the landlord's evidence package was received the day before the hearing. The landlord acknowledged that he had mailed the evidence package to the tenant only five days before the hearing. I found the landlord failed to serve his evidence package to the tenant within the time limits provided under the Rules of Procedure and I excluded his package from further consideration. The parties were informed that the landlord would be permitted to provide oral testimony and refer to the tenant's evidence package, which was received more than two months before the hearing, in support of his position.

In filing this application the landlord requested authorization to retain the security deposit; however, a previous dispute resolution proceeding involving the security deposit has already been heard and decided upon pursuant to a tenant's Application for Dispute Resolution. Since the tenants have already been provided a Monetary Order for return of the security deposit I find the security deposit has been disposed of and I do not give further consideration to the landlord's request to retain it. As such, this decision shall determine whether the landlord has established an entitlement to receive compensation from the tenant for unpaid rent and damage to the rental unit.

It should be noted that at the conclusion of the teleconference call I indicated that the landlord was unsuccessful in establishing an entitlement to compensation in the amounts he was seeking from the tenant. The landlord indicated he would file another Application for Dispute Resolution and provide more evidence. I strongly cautioned that the landlord that parties cannot repeatedly file applications against a party for the matters already heard and decided upon.

Issue(s) to be Decided

Has the landlord established an entitlement to receive compensation from the tenant for unpaid rent and damage to the rental unit in the amounts claimed?

Background and Evidence

Pursuant to a written tenancy agreement, a month-to-month tenancy commenced April 1, 2012 and the tenants paid a security deposit of \$750.00. The tenants were required to pay rent of \$1,500.00 on the 1st day of every month.

The tenants gave the landlord notice to end tenancy on January 9, 2013 with a stated effective date of February 9, 2013. The tenants gave the landlord a cheque for \$443.83 for rent for the period of February 1 – 9, 2013. The landlord did not cash the cheque and returned it to the tenants. The return of the tenant's cheque was treated by both parties as a partial refund of the security deposit.

A few weeks after the tenancy ended the tenants enquired as to the balance of the security deposit and the landlord provided the tenants a written statement indicating the landlord was retaining the balance of the security deposit as compensation for the following:

Door frame replacement	\$ 90.00
Wall crack repair	120.00
Carpet cleaning	<u>100.00</u>
Total	\$310.00

In filing this application, the landlord is seeking compensation of \$1,654.80 for a hole in the wall and \$983.92 for unpaid rent for the period of February 10 – 28, 2013. Below, I have summarized the parties' respective positions regarding these claims.

Wall damage

The landlord submitted that the tenants caused a hole in the bedroom wall approximately 1 foot in diameter. The landlord stated he obtained an estimate to “replace the entire wall” in the amount of \$1,654.80 on February 10, 2013. The landlord explained that the entire wall needs to be replaced as the electrical panel is on the same wall as the hole. The landlord stated the wall has been temporarily patched with drywall mud but that he has not replaced the wall as he does not have the funds to do so.

The tenant testified that he was unaware of any hole in the wall at the end of the tenancy. Further, the landlord conducted an inspection at the end of the tenancy, although a move-out inspection report was not prepared, and there was no mention of a hole in the wall.

Unpaid Rent

The landlord submitted that the tenants gave improper notice to end the tenancy as of February 9, 2013. The landlord stated that new tenants were given possession of the rental unit on February 11, 2013 but that he did not charge the incoming tenants any rent for February 2013.

The tenant testified that upon giving the landlord notice to end the tenancy on January 9, 2013 the landlord began showing the unit to prospective tenants. The tenant questioned why the landlord returned their rent cheque and did not pursue them for unpaid rent at the time if, in fact, he suffered a loss of rent for the month of February 2013. The tenant also stated that during the previous dispute resolution hearing the landlord had testified that there was no unpaid rent.

The landlord explained that he did not charge the incoming tenants any rent because the outgoing tenants were responsible for paying for February 2013 rent. When I pointed out the landlord did not cash the tenant’s rent cheque and did not pursue the tenants for rent until filing this Application for Dispute Resolution the landlord stated he “did not know the rule” about the tenants responsibility to pay rent for February 2013 until he filed his Application.

The landlord also submitted that he did not charge the incoming tenants any rent for February 2013 because they only moved a few possessions into the unit and it is not his practice to charge tenants rent in such cases. In support of this position the landlord stated that the tenants named in this dispute also moved in early and did not pay rent before their tenancy formally commenced. The tenant responded by stating they were provided possession of the unit one day early but did not move their possessions in until

April 9, 2012 as evidenced by a moving company invoice showing delivery on April 9, 2013. I noted that the photographs, provided to the tenant for the previous dispute resolution proceeding, include photographs date stamped as of March 31, 2012 that show the unit as largely empty except for an bed without linen/bedding and a kitchen table.

Finally, the landlord submitted that he incurred costs to find new tenants although such costs were not specified or claimed.

Analysis

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 section 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. Verification of the value of the loss; and,
4. That the party making the application took reasonable steps to minimize the damage or loss.

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

Wall damage

While I accept that there was a hole in the wall at some point in time, based upon the photographs, I was provided disputed verbal testimony that a hole in the wall was caused by the tenants during their tenancy and I find the landlord provided inconsistent and unsupported submissions regarding wall damage. In particular, the landlord claims to have obtained an estimate to repair damage to the wall in the amount of \$1,654.80 on February 10, 2013 yet in the written statement the landlord provided to the tenants a few weeks after the tenancy ended the landlord indicated the wall repair cost \$120.00. Further, I found the landlord did not provide a reasonable explanation for the need to the entire wall replaced as opposed to a smaller patch.

Therefore, I find the landlord failed to establish the tenant is responsible for causing \$1,654.80 in damage and I dismiss this portion of the landlord's claim.

Unpaid rent

Considering the tenants had a month-to-month tenancy and were required to pay rent on the 1st day of every month, the Act required the tenants to give notice to end the tenancy on a date that was: at least one month after giving notice and on the last day of the month. Since the tenants gave notice during the month of January 2013 their notice should have had an effective date of February 28, 2013. Therefore, I accept the tenants violated the requirements of the Act with respect to the effective date of their notice.

As provided in the test for damages or loss outlined above, a violation of the Act is not, in itself, a basis to receive compensation from the other party. In order to succeed in a claim for loss of rent, the landlord must also establish he suffered a loss of rent as a result of the violation despite his efforts to mitigate the loss. Therefore, I proceed to analyze whether the landlord demonstrated that he suffered a loss of rent.

I find the landlord's submissions that the landlord did not require the incoming tenants to pay rent for any part of the month of February 2013 because the subject tenants were going to be held responsible for the rent to be unlikely, especially when I consider:

- The landlord returned the partial rent cheque the tenants provided to him;
- The landlord did not request rent from the subject tenants in February 2013 or indicate any loss of rent by way of the written statement he sent to them in the weeks that followed the tenancy; and,
- The landlord did not provide a copy of the tenancy agreement entered into with the new tenants or any other documentation to demonstrate he did not require or collect rent from the incoming tenants until after February 2013.

The landlord's effort and expenditures to secure new tenants are not a basis to award the landlord unpaid rent in this case. As the landlord was informed during the hearing, a month-to-month tenancy that ends or is set to end, requires the landlord to take action to mitigate losses of rent by making reasonable efforts to find new tenants. The expenditures for doing so are considered normal costs of doing business as a landlord.

In light of the above, I find the landlord failed to establish that he suffered a loss of rent in the amount claimed for February 2013 and I dismiss this portion of his claim.

As the landlord was unsuccessful in this application, I make no award for recovery of the filing fee.

Conclusion

The landlord's application has been dismissed in its entirety.

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: December 13, 2013

Residential Tenancy Branch

