



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit and a cross-application by the tenant for an order for the return of double her security deposit and an additional monetary award. Both parties participated in the conference call hearing and confirmed having received the evidence of the other.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the tenant entitled to a monetary order as claimed?
Should the security deposit be returned to the tenant?

Background, Evidence and Analysis

The parties agreed that the tenancy began on November 1, 2012 and ended on October 31, 2013. They further agreed that the tenant paid a security deposit of \$600.00 at the outset of the tenancy and that rent was set at \$1,200.00 per month. They further agreed that the tenant provided written notice to the landlord on October 1 that she would be ending the tenancy on October 31.

I address the parties' claims and my findings around each below.

Landlord's claim for November rent

The landlord seeks to recover \$1,200.00 in lost income for the month of November. The landlord testified that on October 1, he received the tenant's notice that she was ending the tenancy on October 31. He immediately began advertising the rental unit, but claimed he was prevented from showing the unit because tenant would not permit access. He testified that he posted a notice that he would be entering the unit to show it

and the tenant refused despite having received that notice. The tenant acknowledged having refused access once, but testified that she did so because she and the landlord had mutually agreed to times for the showing and he did not comply with their arrangement. Both parties provided copies of the correspondence which flowed between them on the subject of showing the unit.

The tenant testified that she gave late notice to end the tenancy because she had been harassed by the landlord and gave notice as soon as she found alternative accommodation.

The landlord testified that he was unable to re-rent the unit until December 1 because of the tenant's late notice to end the tenancy, her actions in preventing him from showing the unit and the fact that repairs had to be undertaken after the tenancy ended.

Section 45 of the Act provides that a notice to end tenancy given by a tenant is effective not earlier than one month before the landlord receives the notice and on the day before rent is due. In this case, a notice given on October 1 could not be effective prior to November 30. Section 53 of the Act automatically changes ineffective dates of notices, which means that the effective date of the tenant's notice was automatically changed to November 30.

Although the tenant claimed that she gave late notice because the landlord had harassed her, the only time a tenant can give short notice to end the tenancy is if they first advise the landlord in writing that the landlord has broken a material term in the tenancy and have given the landlord a reasonable opportunity to repair that breach. There is no evidence before me that the tenant followed this procedure prior to giving the landlord her notice.

In order to succeed in his claim for compensation, the landlord must prove that he has acted reasonably to minimize his losses. I accept that the landlord advertised the rental unit quickly and that on at least one occasion, the tenant wrongfully denied the landlord entry into the unit despite having received written notice that he would require access. I find that the landlord acted reasonably to minimize his losses.

I find that the landlord is entitled to recover the income lost for the month of November and I award him \$1,200.00.

Landlord's claim for lock replacement

The landlord seeks to recover the cost of replacing the deadbolt on the main door of the home. The landlord at first testified that the doorknob was damaged during the tenancy, to which the tenant responded that the doorknob had simply worn out as a result of

reasonable wear and tear. When I asked the landlord why he had provided a receipt for a deadbolt rather than for a doorknob, he testified that the deadbolt did not function at the end of the tenancy. The tenant denied that the deadbolt had malfunctioned.

I am not satisfied that the deadbolt was not functioning or that the tenant caused any damage to it. Further, because the landlord re-rented the unit and would have had to change the locks at the new tenant's request in any event, I find that the landlord should bear the cost of replacing the deadbolt. The claim is dismissed.

Landlord's claim for carpet cleaning

The landlord seeks to recover the \$99.75 cost of cleaning the carpet at the end of the tenancy. The tenant acknowledged that she did not clean the carpet and that it was stained, but testified that the carpet was unclean at the beginning of the tenancy.

Residential Tenancy Policy Guideline #1 provides that tenants who reside in a rental unit for one year are expected to clean carpets at the end of their tenancy. I find the charge for carpet cleaning to be reasonable and I award the landlord \$99.75.

Landlord's claim for cabinet repair

The landlord seeks to recover the cost of repairing a bathroom cabinet at the end of the tenancy. The landlord theorized that the tenant's children stood on or hung on the door, causing it to come off. The tenant provided evidence showing that on November 15, 2012, at the beginning of the tenancy, she wrote to the landlord to advise him that there was a problem with the cabinet door.

I find it more likely than not that the cabinet door was damaged at the beginning of the tenancy and that it fell off as a result of the previous damage sustained. I therefore dismiss the landlord's claim.

Landlord's claim for cleaning

The landlord seeks to recover the cost of cleaning the rental unit. The landlord claimed that the rental unit was left unreasonably dirty and required 16 hours of cleaning. When asked why the condition inspection report did not note any soiling in the rental unit, the landlord replied that he was unaware of how the report was supposed to be filled out and did not realize that he should note on the report that the unit was dirty. The tenant testified that she left the unit in clean condition. The landlord did not provide photographs to support his claim that the unit was unclean.

I do not accept that the landlord was unaware of how to properly fill out the condition inspection report. The landlord is an experienced landlord and had no difficulty navigating complex rental issues and I find that he was fully aware of how to fill out the report. The tenant is not required to leave the unit spotless, but just reasonably clean. As the landlord provided no photographs to show the condition of the unit, there is no way to determine whether the unit was reasonably clean. I am not satisfied on the evidence that any additional cleaning was required and I therefore dismiss the claim.

Landlord's claim for refrigerator repair

The landlord seeks to recover the cost of repairing or replacing the refrigerator. He testified that the plastic lining of the door was damaged and that while he had originally intended to repair the refrigerator, he has since learned that it would be less expensive to replace it. The landlord had not yet replaced the refrigerator at the time of the hearing. The tenant claimed that the damage to the refrigerator occurred as a result of reasonable wear and tear and that throughout the tenancy, she had to push the refrigerator firmly in order to close it.

There is no evidence that the tenant brought the issue with the refrigerator to the attention of the landlord during the tenancy, which I would have expected her to do had a problem developed. I find it more likely than not that the tenant caused the damage in question. However, because the landlord has not replaced or repaired the refrigerator yet, it is clear that the damage does not affect its performance or prevent the current tenants from using it for its intended purpose. I find that the landlord is entitled to an award for the diminished value of the refrigerator and I award him \$35.00.

Landlord's claim for filing fee

As the landlord has been partially successful in his claim, I find that he is entitled to recover the \$50.00 filing fee paid to bring his application and I award him \$50.00.

Tenant's claim for double security deposit

The landlord filed his application for dispute resolution on October 11, 11 days after the tenancy ended. Section 38 of the Act provides that a landlord is only liable for double the security deposit when he has failed to file a claim against the deposit within 15 days of the end of the tenancy. As the landlord acted within the required timeframe, the tenant is not entitled to an award of double the deposit and I therefore dismiss the claim.

Tenant's claim for loss of quiet enjoyment

The tenant seeks to recover the rent paid for the last month of her tenancy as she claims that the landlord deprived her of quiet enjoyment of the rental unit. The tenant testified that on October 2, the landlord entered the rental unit to speak with her despite the fact that her husband told the landlord that the tenant was sleeping. On that occasion, the husband pulled the door shut and the landlord left, asking that the tenant meet him at 10:00.

When the parties met at 10:00 on the same day, the tenant claimed that the landlord was verbally abusive, calling her illiterate, and saying that "if you touch my wall, you watch what I'm going to do to you." The tenant testified that at this point, her husband used an expletive, in response to which the landlord raised his fist, causing the tenant to fear that the landlord would harm her husband.

The tenant testified that just 3 days later, on October 5, the landlord brought her a schedule for showing the suite to prospective tenants and asked her to sign an agreement that he could show the suite at those times. The tenant refused to sign the document and claimed that the landlord became angry, at which time she summoned the police.

The tenant testified that as a result of the landlord's behaviour, she was stressed and anxious, unable to enjoy the rental unit.

The landlord testified that in each exchange with the tenant, she also raised her voice.

While I accept that the landlord's behaviour on these two occasions was inappropriate, I find it more likely than not that the tenant's behaviour was also inappropriate and possibly escalated the situation. I am not satisfied that these incidents are sufficiently significant in substance or duration to attract compensation and for that reason, I dismiss the claim for compensation for loss of quiet enjoyment.

Tenant's claim for filing fee

As the tenant has been wholly unsuccessful in her claim, I dismiss her claim to recover the filing fee.

Conclusion

The tenant's claim has been dismissed in its entirety. The landlord is awarded a total of \$1,384.75 which represents \$1,200.00 for lost income for November, \$99.75 for carpet cleaning, \$35.00 for the diminished value of the refrigerator and \$50.00 for the filing fee. I order the landlord to retain the \$600.00 security deposit in partial satisfaction of his claim and I grant him a monetary order under section 67 for the balance of \$784.75. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: January 17, 2014

Residential Tenancy Branch

