



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for damages to the unit;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for compensation under the Act;
2. Return of double the security deposit; and
3. To recover the cost of filing 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 at the hearing.

Preliminary matter

At the outset of the hearing, the article student for the landlord stated that the parties had attended a previous dispute resolution hearing on September 16, 2013, and at that hearing the landlord's claim for damages to the rental unit was heard and a decision was made.

The article student stated that on September 26, 2013, the landlord filed a subsequent application and in that application they claimed for unpaid rent and damages to the unit. The article student stated as the claim for damages were heard on September 16, 2013, and a decision was made they will only be proceeding on the issue of unpaid rent.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
 Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
 Is the tenant entitled to a monetary order for compensation under the Act?
 Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The parties entered into a fixed term tenancy which began on June 1, 2012 and was to expire on July 1, 2013. Rent in the amount of \$1,750.00 was payable on the first of each month. A security deposit of \$1,750.00 was paid by the tenant. The tenant vacated the rental unit on May 20, 2013.

Tenant's application

The tenant claims as follows:

a.	Recover two months of rent	\$3,500.00
b.	Recover cost of plumber	\$ 450.00
c.	Return of double the security deposit	\$3,500.00
	Total claimed	\$7,450.00

Recover two months of rent

The tenant testified that due to a flood on April 8, 2013, in the rental unit they were unable to use the kitchen or living room. The tenant stated that they vacated the rental unit on May 20, 2013. The tenant seeks to recover the rent they paid for April and May 2013 in the amount of \$3,500.00.

The landlord testified that after the flood the management company inspected the rental unit and the appliances had to be removed and placed in the living room in order for the walls and floor to be properly inspected. The landlord stated the appliance were put back in there places. The landlord stated that there was also an area of the carpet in the living room that was cut in order for the subfloor to be inspected. The landlord stated at

no time was the rental unit uninhabitable as claimed by the tenant and that she never received any further complaints from the tenant.

The landlord testified on May 10, 2013, she received a letter from the property management company indication she was required to pay a large sum of money for the damage that the tenants caused and immediately booked a flight to inspect the rental unit.

The landlord testified she informed the tenant that she would be attending on May 28, 2013, however, the tenant had silently moved out without giving her any notice once they knew she was coming.

Recover cost of plumber

The tenant testified that they seek to recover the cost of hiring a plumber when the flood occurred on April 8, 2013. The tenant stated that he contacted the landlord and the strata corporation but no one would help him.

The witness for the tenant stated he is a certified plumber and his company name is (HS) and he attended the rental unit to clear a blockage in the pipe. The witness stated when he arrived there was lots of water on the kitchen and living room floor. The witness stated that he provided an invoice to the tenant in the amount of \$450.00.

The Article student for the landlord questioned the validity of the plumber's invoice which was provided to the landlord, as the company listed on the invoice was untraceable by searching the phone book or the internet. Filed in the evidence is a copy of the invoice.

The article student questioned the tenant as to why the company name provided by his witness was different than the one listed on the invoice.

The tenant responded that the company listed on the invoice was not used as they were not qualified and that he then telephoned another company. However, after being questioned further, the tenant's testimony changed indicating there were two companies that attended and when the first company was unable to clear the blockage, the second company was telephoned and they were successful clearing the blockage. The tenant stated that the two companies decided to split the money.

Return of double the security deposit

The tenant testified that at the hearing on September 16, 2013, the landlord was ordered to return the security deposit to them within 15 days. Filed in evidence is a copy of the decision.

The article student stated that on September 16, 2013, the tenant's forwarding address was provided during the hearing and the arbitrator order that the landlord was to comply with section 38 of the Act, by either repay the security deposit to the tenant or filed an application for dispute resolution. The article student stated the landlord complied with section 38 of the Act as they filed their application within the statutory timeline.

Landlord's application

The landlord claims as follows:

a.	Loss of rent for June 2013	\$1,750.00
b.	Filing fee	\$ 50.00
	Total claimed	\$1,800.00

Counsel submits that the tenant breached the fixed term agreement by vacating the rental unit prior to the expiry of the fixed term agreement.

The tenant testified that the breached the fixed term agreement as the rental unit was uninhabitable.

The landlord through their interpreter argued that the rental unit was not uninhabitable as claimed. The landlord stated that after the initial flood she did not hear any complaints from the tenant. The landlord stated it was only when she called the tenants on May 10, 2013 and informed them that she would be attending to inspect the unit on May 28, 2013, that they abandoned the rental unit, without any notice. The landlord stated when she attended the rental unit the rental unit was not uninhabitable as claimed by the tenant, however, there was damage to the drywall and the carpet due to being cut during the inspection.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, each party has the burden of proof to prove their claim.

Tenant's application

Recover two months of rent

In this case, the tenant alleged the rental unit was uninhabitable due to a flood that occurred on April 8, 2013. However, I find the action of the tenant remaining in the unit until May 20, 2013, does not support that allegation.

Further, the tenant has provided no evidence, such as photographs of the rental unit or any letters sent to the landlord informing them that they were having any further difficulties with the rental unit. I find the tenant has failed to provide sufficient evidence to support the rental unit was uninhabitable. Therefore, I find the tenant is not entitled to recover two months of rent.

Recover cost of plumber

In this case, the tenant seeks to recover the cost of the plumber's invoice. However, the only invoice that was submitted was from a company that was untraceable. Further, the witness for the tenant provided a different company name and indicated that he sent his own invoice to the tenant in the amount of \$450.00, a copy of this invoice was not submitted as evidence.

Further, the tenant claimed that he paid \$450.00 and this amount was equally shared between the two companies. I find that to be highly unlikely and unsupported by any evidence, such as cancelled cheques. Therefore, I find the tenant has failed to prove a loss exists.

Return of double the security deposit

Under section 38(6) of the Act, the landlord must pay the tenant double the amount of the security deposit if the landlord fails to comply with section 38(1) of the Act.

In this case, the landlord received the tenant's forwarding address on September 16, 2013, during a dispute resolution hearing. The landlord's had to repay or make an application for dispute resolution claiming against the deposit within 15 days. The landlord's application for dispute resolution was filed on September 26, 2013. I find the landlord has complied with section 38 of the Act and double of the security deposit is not appropriate in this case.

In light of the above, the tenant's application is dismissed without leave to reapply.

Landlord's application

Unpaid rent

Section 45 of the Residential Tenancy Act states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
(a) is not earlier than one month after the date the landlord receives the notice,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based,

The evidence of the landlord was that the tenant breached the fixed term agreement when they vacated the rental unit prior to the expiry of the agreement. The landlord stated when she contacted the tenants on May 10, 2013, she informed them that she would be attending on May 28, 2013, to perform an inspection of the rental unit and there was no indication that they were moving. However, before she arrived the tenant had abandoned the premises.

The evidence of the tenant was the rental unit was uninhabitable due to the flood that occurred on April 8, 2013. However, as I have previously found in the tenant's application that they had failed to prove that the unit was uninhabitable, I find the tenants breached the tenancy agreement and the Act, when they vacated the unit on May 20, 2013, as the earliest date they could have legally ended the tenancy was July 1, 2013, as stated in the tenancy agreement.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for June 2013. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not

breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Therefore, I find the landlord is entitled to recover loss of rent in the amount of **\$1,750.00**.

In this case the landlord paid \$100.00 to file their application. However, as the damages portion did not proceed, I find the landlord is only entitled to recover \$50.00 as that would have been the cost of the filing fee for the claim of unpaid rent.

I find that the landlord has established a total monetary claim of **\$1,800.00** comprised of the above described amounts.

I order that the landlord retain the security deposit of **\$1,750.00** in partial satisfaction of the claim and I grant the landlord) an order under section 67 for the balance due of **\$50.00**.

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

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 8, 2014

Residential Tenancy Branch