



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – MNDC, FF

For the landlord – MNR, MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing; although the landlord's agent stated they did not receive the tenant's faxed evidence. As the tenant could not provide proof of the faxed evidence it has not been considered for this hearing.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the tenant's security deposit?

Background and Evidence

The parties agree that this tenancy started on June 01, 2012. Two tenants were named on the tenancy agreement however the male tenant was incarcerated and no longer lived at the rental unit. This was a fixed term tenancy which was due to expire on December 01, 2012. Rent for this unit was \$775.00 per month and was due on the 1st day of each month. The tenants paid a security deposit of \$387.50 on May 30, 2012. The tenant attended a move in condition inspection and the move out inspection was conducted in the tenants' absence. The tenant did not provide the landlord with a forwarding address in writing.

The tenant testifies that on October 09, 2012 the tenant called the resident manager BD and informed her that she was moving out as the other tenant had been arrested. BD told the tenant that the lease ran until the end of November, 2012 so the tenant could not give notice until then. The tenant testifies that a few days later she found new housing which she could move into on October 15, 2012 and she signed a new tenancy agreement with her new landlord. The tenant testifies that she left a notice to end tenancy at the landlord's office on October 15, 2012. The tenant testifies that she vacated on October 15, 2012 and told BD she would return to pay rent for November.

The tenant testifies that on November 05, 2012 she gave the landlord \$600.00 towards Novembers rent and asked the landlord to use her security deposit against the remaining \$175.00. The tenant testifies that the landlord told the tenant she could not apply the security deposit to rent. The tenant testifies that she met a girl who needed somewhere to stay and so the tenant called BD and asked if this girl could move into the unit for a month. The tenant testifies that she took this girl to meet BD and she moved in on November 01, 2012. The tenant testifies that she did not hear anything else from the landlord about owing anymore rent and the girl who moved into her unit said she would pay the landlord the \$175.00 owed for November, 2012.

The tenant testifies that in 2013 she was sent a letter from a collection agency saying that the tenant owed \$2,079.00. The tenant testifies that she called BD to ask what this was for and BD informed the tenant that she did not have the tenants records and to call the landlord. On September 24, 2013 the tenant called the landlord and spoke to someone there. They were supposed to get back to the tenant but failed to do so. The tenant testifies that she also emailed the landlord on September 30, 2013. The tenant testifies that she then paid \$2,089.00 to the collection agency in order to protect her credit rating. The tenant testifies that she did not owe this amount to the landlord as the landlord had allowed the other girl to move into the unit in November, 2012. The tenant seeks to recover the amount paid of \$2,089.00 from the landlord.

The landlord disputes the tenant's claim. The landlord's agent BD testifies that she only spoke to the tenant once. The tenant told BD that she was going away on a vacation and that a friend was going to be staying at her unit. BD disputes that she was introduced to this person and never met her until this person paid \$175.00 on behalf of the tenant for Novembers rent. BD testifies that the tenant's belongings were still in the unit and when BD tried to call the tenant her voice mail box was full. BD testifies that they do not allow sublets without the person filling in an application form, providing references and doing a credit check. That person would then be required to fill in a tenancy agreement before occupation. None of this occurred as the tenant had simply said she was going on vacation and not subletting the unit.

BD testifies that the girl occupying the tenant's unit moved out of the tenant's unit on January 06, 2013. BD testifies that as the tenant had not provided either a notice to end tenancy or a forwarding address the landlord deemed that the unit had been abandoned on January 06, 2013 and so conducted a move out inspection the next day.

The landlord's agent XR testifies that without notice from the tenant the tenant remained responsible for the unit until it was vacated. The landlord therefore had to recover rent for December of \$775.00 and for January of \$775.00. Furthermore as the unit could not be re-rented until April 01, 2013, despite a running advertisement, the landlord also had to recover a loss of income for February, 2013 of \$775.00. The landlord's agent XR testifies that this matter was then placed in the hands of the collection agency to recover the debt.

The landlord's agent XR testifies that the tenant had a credit on her account for November of \$17.50 so the total amount of rent owed was \$2,307.50. The tenant paid \$2,079.00 to the collection agency. Therefore the tenant still owes \$228.50 in unpaid rent. XR testifies that she had spoken to the tenant when the tenant called the office about the collection agency bill. The tenant was provided all relevant documentation from the collection agency and paid the bill.

The landlord testifies that at the move out inspection there were some areas identified as requiring work. The bedroom carpet was stained, there was some wall patching required where the tenant had put a TV on the wall using bolts and there was generally cleaning required. The landlord has provided invoices for the cost of this work in documentary evidence. The landlord seeks \$84.00 for carpet cleaning; \$30.00 to patch the wall; and \$45.00 to clean. The landlord's agent BD testifies that at the time she was new to the job and so now realizes she did not fill in the condition report correctly however all the relevant information is there.

The landlord seeks an Order to keep the security deposit of \$387.50.

Analysis

I have carefully considered all the allowable evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim to recover the sum of \$2,089.00 from the landlord; I refer the parties to s.45(1)(2) of the Act which states:

45 (1) *A tenant may end a periodic 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, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(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, that rent is payable under the tenancy agreement.

The tenant has insufficient evidence to show that she did provide written notice to end the tenancy. As a result I must conclude that the tenancy continued. A tenant must not sublet the unit without the landlord's written permission and I have no evidence to support the tenant's claim that the landlord did give permission for the tenant to sublet this unit.

I find the landlords agents testimony more credible that the tenant told the landlord she was simply going on vacation and asked if a friend could stay in the unit particularly in light of section 18 of the tenancy agreement which notifies the tenant that written

permission must be gained from the landlord and any assignment or subletting of the premises does not release the tenant from his covenants and obligations in the agreement and he shall continue to be primarily liable under the tenancy agreement.

Consequently it is my decision that the tenant remained responsible for this unit until January 06, 2013. As the tenant did not pay rent for December or January I find the landlord was entitled to recover the rent owed. I further find as no notice was provided on December 31, 2012 to end the tenancy at the end of January, 2013 the landlord is entitled to recover a loss of rental income for February, 2013. The landlord has shown that there is a running advertisement for the units in this building and this unit was not re-rented until April, 01, 2013. I therefore find the landlord is entitled to recover the balance of unpaid rent for this unit of **\$228.50** as the tenant has paid the remainder of the outstanding rent to the collection agency.

The tenant's application to recover the rent paid of \$2,079.00 is therefore dismissed. The tenant must also bear the cost of filing her own application.

With regard to the landlord's application for damage to the unit, site or property; I have considered the landlord's claim in this matter. The landlord did mark of the condition inspection report indicating that all areas of the unit were left "good" however at the end of the report the landlord has also documented areas that require attention as they were not clean. The landlord's agent BD testified that she was new at the job and did not know to document each room separately with any work required so put it all at the end of the report. I am satisfied that this work was required and although the tenant had vacated the unit in October, 2012 the tenant still remained responsible for the unit. Therefore the landlord is entitled to recover the costs incurred to clean the bedroom carpet, repair the wall and do generally cleaning. I therefore uphold the landlord's claim for **\$159.00**.

The landlord is entitled to retain the tenant's security deposit of **\$387.50** in partial satisfaction of the landlord's claim pursuant to s. 38(4)(b) of the *Act*. The landlord is also

netttled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act* for the following amount:

Unpaid rent	\$228.50
Cleaning and repair	159.00
Filing fee	\$50.00
Less security deposit	(-\$387.50)
Total amount due to the landlord	\$50.00

Conclusion

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

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court 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

