



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNDC, MNSD

For the landlords – MNR, MND, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and a Monetary Order to recover the security deposit. The landlords seek a Monetary Order to recover unpaid rent, a Monetary Order for damage to the unit, site or property; an Order to keep the tenant's security deposit and to recover the filing fee paid for this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover the security deposit?
- Are the landlords entitled to a Monetary Order for unpaid rent?

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on September 12, 2011. The tenant shares the rental unit with other tenants, each under their own tenancy agreement. The tenant has his own room and shares the common areas of the unit. Rent was \$475.00 and was due on the last day of each month in advance. The tenant paid a security deposit of \$237.50 on September 13, 2011.

The tenant's application

The tenant testifies that on August 01, 2013 the landlords asked the tenant to move out. The tenant testifies that he vacated the unit on August 24, 2013 but could not contact the landlords to inform them as the landlords were not available. The tenant seeks to recover the last week of rent paid for August for the unit and calculates this amount to be \$107.25. The tenant also seeks to recover his security deposit but agrees he has not provided a forwarding address in writing to the landlords other than the address on the application for this proceeding.

The landlords dispute the tenant's claim. The landlord (RC) testifies that the tenant was never told to vacate the unit. The tenant was only asked not to leave a hose pipe running. The landlord testifies that they were only informed that the tenant had vacated the unit by one of the other tenants who noticed that the tenant had moved his belongings out of his room. The landlord testifies that she was available throughout the whole month of August and the tenant failed to give the landlords any Notice that he was leaving. The landlords therefore dispute the tenants claim for a Monetary Order to have the last weeks rent returned.

The landlord testifies that they have never received a forwarding address from the tenant except when they received the tenant's documents for this hearing. The landlords then filed their own application seeking an Order to keep the security deposit. The landlord refers to the tenant's documentary evidence in which the tenant has written a letter saying the reason he moved from the unit was because of the behaviour of other tenants which the landlord did not rectify. Now the tenant is stating that he moved out because the landlord told the tenant to go. The landlord testifies that the tenant has never complained about other tenants to the landlord. The landlord states that the tenant has contradicted himself and both statements are fabricated.

The landlords' application

The landlord testifies that as the tenant did not give proper notice to end the tenancy the landlord were unable to re-rent the room for the following month and therefore they seek to recover one month's rent for September from the tenant of \$475.00.

The landlord testifies that after they were notified that the tenant had vacated the unit the landlord s went into the unit and found the tenant's room to be in an unclean condition. This room was rented furnished and included a bed and bedding. The bedding and mattress were left in a disgusting condition and the landlords refer to their photographic evidence. The photographs show that the pillow and pillow case were dirty, the quilt, pillows, sheets, mattress and the mattress and box spring covers were left dirty and stained. The landlord testifies that they tried to have these items cleaned but this did not work and all items had to be replaced. The tenancy agreement notifies the tenant that he is responsible to have the duvet and pillows dry cleaned at the end of the tenancy and this clearly had not been done and the tenant did not regularly launder his bedding during the tenancy.

The landlord testifies that they purchased the following items:

Quilt - \$27.80 (receipt provided)

Sheets – 25.72 (receipt provided)

Pillow - \$5.00 (receipt not provided)

Used bed - \$58.85 (receipt provided)

Mattress and box spring covers - \$50.00 (receipt not provided)

The landlord testifies that they also had to clean the tenant's room and other common areas which the tenant used and have provided photographic evidence showing areas unclean. The landlords seek to recover \$90.00 for this work which they completed themselves. The landlords seek to recover \$12.86 for garbage bags used in the clean up and \$14.55 for a vacuum bag used to clean the tenants room. (receipts provided)

The landlord testifies that the tenant was asked many times to clean up oil left by his vehicle on the driveway. The tenant did put some cardboard under his car but the oil left on the driveway was in the tenant's parking space and was fresh oil. The landlords seek to recover \$35.00 for this work which they did themselves. The landlord testifies that the tenant was issued with four keys but only left three keys were left at the unit when he moved out. The missing key is for the back gate and the landlords' replaced the keys for \$20.00 (receipt provided). The landlords seek a further amount of \$25.00 for their time and gas used to run around and do this work. The landlords have provided a copy of the tenancy agreement and letters from another tenant confirming the pictures were taken of the tenant's room and the amount of keys left by the tenant.

The tenant disputes the landlords' claim the tenant testifies that he left all the keys he had at the unit but states he could have misplaced one key. The tenant testifies that the oil on the driveway was there prior to the tenant moving in and when asked by the landlord how many times did the landlord ask the tenant to remove the oil or why did the tenant put cardboard under his car the tenant states that his car did not leak oil. The landlord asks the tenant that if this oil was from a previous tenant's car then how could it be fresh oil. The tenant responds and states that one other tenant had a car and when the tenant went to work his parking space was used by other people.

The tenant testifies that he did clean his room before moving out and he did wash his bedding. The tenant testifies that the bedding was cleaned as best as he could and the landlord must expect some wear and tear over the two years he lived there.

The tenant disputes the landlords' claim for the other items and testifies that he left the landlords with one extra week rent and the security deposit. After the landlords phoned the tenant's parents saying the tenant owed an extra month's rent the tenant decided to file a claim to recover the rent and security deposit.

The landlord testifies that they did regular room inspections and had to tell the tenant to keep his room clean and to wash his bedding. Other tenants informed the landlord that they had never seen the tenant wash his bedding.

The tenant refers to a letter from his employer in which the tenant is described as honest and reliable. The tenant states he does not tell lies and the landlords should be more reasonable.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants application; I refer the parties to s. 45(1) of the *Act* which informs the parties that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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. As the tenancy agreement states that rent is due on the last day of each month the tenant should have provided written Notice to the landlords on July 30, 2013 in order to end the tenancy on August 31, 2013. There is insufficient evidence to show that the landlords asked the tenant to vacate the unit and the parties agree that no written Notice was provided by the tenant. Consequently the tenant is not

entitled to recover rent for the last week of the tenancy as the landlords are entitled to this rent. This section of the tenants claim is dismissed.

With regard to the tenants claim to recover the security deposit; I find the tenant did not give the landlords a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration. The address on an application cannot be considered the forwarding address as it is an address for service and may or may not be a forwarding address. Therefore at the time that the tenant applied for dispute resolution, the landlords were under no obligation to return the security deposit and therefore this application is premature. I will therefore deal with the security deposit under the landlords' application.

With regard to the landlords' application for unpaid rent;. as I have determined above that the tenant did not provided one clear months written notice to end the tenancy I find the landlords are entitled to recover rent as a loss of income for September, 2013 as the landlords were unable to re-rent the unit for that month. The landlords have therefore established a claim for \$475.00.

With regard to the landlords claim for damages; I have applied a test used for damage or loss claims and in this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find the landlords have established that the tenant did not leave the rental unit in a reasonable clean condition pursuant to s. 32 of the *Act*. I further find the landlords have established that the extent of the dirty conditions that the bedding

and mattress were left was beyond normal wear and tear and resulted in the landlords having to replace these items. I further find that the tenant has contradicted his own statements and was evasive when questioned by the landlords about the oil on the driveway. I therefore find the tenant's testimony less credible than that of the landlords. Consequently, on a balance of probabilities, I am satisfied that this oil was left by the tenant's car and the tenant failed to clean it up as requested by the landlord. I further find the tenant failed to leave all the keys that were provided to him at the start of the tenancy. However, the landlords have not provided actual costs for all the items claimed in the form of receipts and this will result in part of their claim being reduced. I therefore find in favour of the landlords' claim in damages for the following amounts:

cleaning	\$90.00
Cleaning oil from driveway	\$25.00
Replacement quilt	\$27.80
Replacement sheets	\$25.72
Replacement pillow(reduced amount)	\$2.50
Replacement bed	\$58.85
Replacement mattress and box spring covers (reduced amount)	\$25.00
Replacement keys	\$20.00
Garbage and vacuum bags	\$27.41
Total amount due to the landlords for damages and cleaning	\$302.28

I ORDER the landlord to keep the security deposit of \$237.50 pursuant to s. 38(4)(b) of the *Act*. I further find the landlords are entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*. These amounts have been offset against the landlords' monetary claim as follows:

Loss of rent for September	\$475.00
Damages and cleaning	\$302.28
Filing fee	\$50.00

Less security deposit	(-\$237.50)
Total amount due to the landlord	\$589.78

Conclusion

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

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$589.78**. The Order must be served on the tenant. Should the tenant 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 06, 2014

Residential Tenancy Branch

