



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNL, ERP, RR, MNSD

For the landlord – MND, MNDC, MNR, MNSD

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Two Month Notice to End Tenancy for landlords use of the property; for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs to the unit, site or property; and a Monetary Order to recover the security deposit. 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 tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement.

At the outset of the hearing the tenant testifies hat they have vacated the rental unit on September 30, 2013 and therefore withdraws their application to cancel a Two Month Notice to End Tenancy for landlords use of the property; for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs to the unit, site or property. The tenants seeks to amend her application to include a Monetary order for money owed or compensation for damage or loss as stated in the letter sent to the landlord. The landlord withdraws his application for a Monetary Order for money owed or compensation for damage or loss.

The tenant and landlord 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. The tenant did not provide all her evidence to the landlord and this evidence has been excluded. All included evidence and testimony of the parties has been reviewed and is considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security deposit?
- 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 security deposit?

Background and Evidence

The parties agree that this tenancy started on March 15, 2011. Rent for this unit was \$760.00 per month, due on the 1st of each month. The tenant paid a security deposit of \$385.00 at the start of the tenancy.

The tenant testifies that the landlord had given the tenant two months verbal notice to end the tenancy. The tenant seeks to recover compensation of \$300.00 for the rent paid for September in compensation for the Notice.

The tenant testifies that there was a water leak from the landlord's unit above. This leaked into the tenant's storage closet in April 2013.. The tenant testifies they had to remove their belongings from the closet and store them in the bedroom and hall. The landlord called the plumber and the leak was repaired. However the drywall remained wet. The tenant testifies that they informed the landlord that they would have to go and stay at their parents home until the damage was repaired in the closet.

The tenant testifies they left for a week and then returned to the unit. The unit smelt musty and damp and the drywall had not been removed. The tenant returned to their parents for another week but when they returned to the unit two weeks later the work was still not done. The tenant testifies that her husband removed the drywall for the landlord. The landlord was asked to seal up the closet but had still not done this in September when the tenants moved out. The tenant testifies that they did ask the landlord for two weeks of rent in compensation. The landlord did not provide this and the tenant now seeks to recover the amount of \$380.00 from the landlord for having to leave their unit for two weeks in April, 2013.

The tenant testifies that they lost the use of their stove for two weeks. The tenant testifies that she was making dinner when one of the elements short circuited and gave the tenant an electrical shock. The landlord was informed and an electrician came to look at the stove. The electrician said the stove was old and rusty and should not be used as it was not working properly. The tenant asked the landlord for a new stove however this took the landlord two weeks to bring it to the unit. The landlord had this newer stove sitting in the garage for a week before he put it in the unit. The tenant seeks to recover \$380.00 in compensation for being without a stove for two weeks.

The tenant seeks to recover double the security deposit as the landlord did not return this within 15 days of the end of the tenancy.

The landlord disputes the tenant's claim. The landlord testifies that the water leak occurred when the hot water tank burst. The tenant's husband came and turned off the water and after the tenant informed the landlord about the leak in the closet the landlord dealt with it straight away. The tenant's husband said as he worked for a hazmat company he would remove the drywall. The landlord informed the tenants that he would get the closet repair finished but was told by the tenant not to worry about it and to take his time. The landlord testifies that at that time the relationship between the two families was very good. The landlord testifies that he then waited until the warmer months to make the repair. The landlord disputes that the tenants moved out for two weeks. The

landlord testifies that the tenants could be heard in their unit everyday and their car was still parked at the unit every day.

The landlord disputes the tenants claim concerning the stove. The landlord testifies that the tenant did inform the landlord that the stove element had short circuited. The landlord sent an electrician around and told the tenants he would get them a new stove. The electrician informed the landlord that only one element had short circuited but the other three elements and the oven could all be used. The electrician informed the landlord that this element was damaged due to the stove being very dirty. The tenant did not inform the landlord that she had been electrocuted. The landlord testifies that the tenants did not inform the landlord that they were not using the stove and eating out every day. The landlord did get another stove and it was in the landlord's garage for a week before it was put in the tenant's unit as the landlord was under the impression the tenants could still use their stove.

The landlord testifies that in September the tenant only paid \$300.00 towards rent and asked the landlord to take the balance from the security deposit. The landlord testifies that this was not in writing. The landlord testifies that he had only asked the tenant verbally to move out but did not give the tenant a written Notice to do so. The landlord disputes that the tenant was entitled to any compensation. The landlord seeks to recover the remainder of the rent of \$460.00.

The landlord testifies that the tenant caused some damage to the unit and had not left the unit in a reasonable clean condition. The tenant had also left a large amount of garbage and discarded furniture in the unit and in the back alley of the property. This consisted of a television set, a set of drawers, a consol table, a centre table and mattresses. The tenants also failed to have the carpets cleaned and these were left dirty.

The landlord seeks to recover \$100.00 for his work cleaning the unit. This work took 4 hours at \$25.00 per hour. The landlord has provided an invoice and photographic evidence of the unit. The landlord seeks to recover \$92.00 for dump fees and has

provided photographs and receipts for the dump in evidence. The landlord seeks to recover \$100.00 for the truck rental and labour costs for removing the garbage and discarded furniture and has provided an invoice in evidence. The landlord also seeks to recover \$89.99 for carpet cleaning and has provided photographs and an invoice in evidence.

The landlord seeks an Order to keep the security deposit to apply to unpaid rent and damages.

The tenant disputes the landlords claim. The tenant testifies that as the landlord had verbally told them they must move out in two months the tenants did not pay all the rent for September as they thought they were entitled to compensation equivalent to one month's rent.

The tenant disputes the landlords claim for damages and cleaning. The tenant testifies that the unit was left clean and their photographs show the unit was left in a clean condition. The tenant agrees they did not shampoo or steam clean the carpets. The tenant agrees they did leave some mattresses in the back alley of the property.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim for compensation of \$300.00 for Septembers rent. A tenant is only entitled to compensation for a Two Month Notice to End Tenancy if the landlord has served the tenant with a legal Two Month Notice on an approved form. If the landlord has only verbally requested that the tenant vacate the unit and the tenant does move out then this is the tenant's choice to vacate and the tenant is not entitled to recover compensation from the landlord equivalent to a month's rent. This section of the tenants claim is dismissed.

With regard to the tenant's claim for compensation for having to stay at their parents for two weeks due to a water leak; when one parties evidence contradicts that of the other

then the burden of proof falls to the person making the claim. The tenant in this case would need to provide corroborating evidence to show that they did vacate the rental unit for two weeks. As I have no corroborating evidence from the tenant that they did vacate the unit for two weeks then this section of the tenants claim is dismissed.

With regard to the tenant's claim for compensation for the loss of the stove for two weeks; again the parties contradict each others evidence. The tenant testifies that they could not use the stove and had to eat elsewhere for two weeks. The landlord testifies that only one element of the stove was not working. The tenant has provided no corroborating evidence to show that the stove was not working or that they had to eat elsewhere for a two week period. Consequently this section of the tenants claim is also dismissed.

With regard to the tenant's claim to recover double the security deposit; s. 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to s. 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on September 17, 2013 and the tenancy ended on September 30, 2013. As a result, the landlords had until October 15, 2013 to return the tenant's security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit or interest and have not filed an application for Dispute Resolution to keep the deposit until January 06, 2013. Therefore, I find that the tenant has established a claim for the return of double the security deposit of **\$770.00** pursuant to s. 38(6)(b) of the *Act*.

With regard to the landlord's claim for unpaid rent for September; a tenant is not entitled to withhold rent as no legal Two Month Notice was given. Consequently it is my decision that the landlord has established a claim to recover unpaid rent of **\$460.00**.

With regard to the landlord's claim for cleaning and garbage removal; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The landlord has met the burden of proof that the tenant failed to leave the rental unit in a reasonable clean condition. Although both parties have provided photographs showing the condition of the unit, as these have been taken from different angles the tenant's pictures do not show areas that the landlords show that determine that the unit was not reasonably clean. I also find the tenant is required to clean the carpets if the tenancy exceeds one year. The tenant is required to remove all belongings and garbage from the property, which clearly they failed to do.

The landlord has provided invoices and receipts showing the actual amounts claimed and I therefore uphold the landlord's claim for cleaning, carpet cleaning and garbage removal to a total amount of **\$381.99**.

As the landlord has been successful with his claim I find the landlord is entitled to deduct the amount of his claim for the tenant's monetary award for double the security deposit as follows:

Unpaid rent	\$460.00
Cleaning and garbage removal	\$381.99
Total due to the landlord	\$841.99
Deduct double security deposit for tenant	(-\$770.00)
Total amount due to the landlord	\$71.99

Conclusion

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 **\$71.99** pursuant to s. 67 of the Act. 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.

I HEREBY FIND in favor of the tenant's monetary claim to recover double the security deposit. The amount of \$770.00 has been deducted from the landlord's claim.

The remainder of the tenant's claim is dismissed without leave to reapply.

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 24, 2014

Residential Tenancy Branch

