



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenant, a witness for the tenant, and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenant agreed that she received the evidence package from the landlord, including the CD with photos, and had the opportunity to review that evidence prior to the hearing. The tenant's evidence was excluded from the proceeding as it was submitted late and not in accordance with the rules of procedure. I find the tenant was served in accordance with the *Act*.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on July 1, 2010 and reverted to a month to month tenancy after

February 28, 2011. Monthly rent in the amount of \$1,225.00 is due on the first day of each month, however, was reduced to \$1,200.00 in February of 2011 by mutual agreement of the parties. The parties agreed that the tenant vacated the rental unit on March 31, 2013. The parties agreed the tenant's security deposit had already been returned by the landlord.

The landlord originally claimed \$1,837.61 however, reduced the total amount of his claim to \$1,812.31 as follows:

Item 1. Loss of rent for April 2013	\$1,200.00
Item 2. Cleaning costs	\$454.81
Item 3. Repair / damages	\$157.50
TOTAL	\$1,812.31

As a reduction in the landlord's claim does not prejudice the tenant, the landlord was permitted to reduce his claim during the hearing.

Regarding item #1, the tenant testified that she could not recall giving the landlord written notice to end the tenancy; however, the tenant stated that she sent an e-mail giving her notice that she would be vacating the rental unit on March 1, 2013 to the landlord. The landlord referred to document "1-2-2" in the landlord's evidence, which is an e-mail dated March 1, 2013 which indicates that the tenant advised the landlord in writing by e-mail on March 1, 2013 that she would be vacating the rental unit on March 31, and the landlord responds to that e-mail indicating that "...I'll accept this notice on the condition that I receive this month's (March) rent in full, today (on time), unless we make some other mutually agreeable/acceptable agreement for its payment...". The landlord confirmed that March 2013 rent was paid, however, stated he is claiming for loss of April 2013 rent due to a "lot of mess and smell" in the rental unit, and that due to the condition of the rental unit, he is seeking the loss of rent for the month of April 2013.

The landlord testified that an incoming condition inspection report was not completed at the start of the tenancy. The landlord testified that an outgoing condition inspection report was not completed at the end of the tenancy. The landlord stated that an outgoing condition inspection report was scheduled for April 3, 2013 at 5:00 p.m., however the landlord confirmed he cancelled that appointment.

Regarding item #2, the landlord presented document "2-5-3" submitted in evidence as support of that the rental unit required cleaning at the end of the tenancy. The landlord confirmed that the author of that document was not available to provide testimony

during the hearing. The tenant stated during the hearing, that she would agree to five hours of cleaning at \$20.00 per hour, for a total of \$100.00 for the landlord, but disagrees that the rental unit had to be cleaned from 10:00 a.m. to 6:00 p.m. on April 4, 2013 and from 9:00 a.m. to 5:00 p.m. on April 5, 2013 as written by "ER" in a document dated April 11, 2013, which indicates 20 hours of cleaning at \$20.00 for a total of \$400.00. The landlord stated that he wanted to rely on all of the photos on the CD submitted in evidence. The photos were not dated. The landlord submitted a copy of a cheque and a bank statement supporting that the \$400.00 cheque issued to "ER" was cashed. The landlord also submitted receipts totalling \$54.81 for "cleaning supplies."

The tenant called witness "CM, who testified that the day before the tenant moved on March 30, 2013, the tenant had cleaning items out in the rental unit and that the tenant helped her move some things in the rental unit. The landlord chose not to cross-examine the tenant's witness.

Regarding item #3, the landlord referred to photos on part 3 of the CD, photo 4A and photo 2, both of which are not dated. The landlord also referred to document "3-6-2" in evidence. The tenant stated that she did not notice scratches as claimed by the landlord and did not agree to this portion of the landlord's claim.

Analysis

Based on the documentary evidence, the oral testimony of both parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or

tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item #1 – The landlord has claimed \$1,200.00 for loss of revenue for the month of April 2013. **I find** that the landlord waived his right to claim for loss of revenue for the month of April 2013, when he replied to the tenant on March 1, 2013 and wrote:

“...I'll accept this notice on the condition that I receive this month's (March) rent in full, today (on time), unless we make some other mutually agreeable/acceptable agreement for its payment...”

[reproduced as written]

Given the above, this portion of the landlord's claim is dismissed, **without leave to reapply**, due to insufficient evidence.

Item #2 – The landlord has claimed \$454.81 for cleaning costs. The landlord testified that an incoming condition inspection report and an outgoing condition inspection report were not completed. Therefore, **I find** the landlord breached sections 23 and 35 respectively, by failing to complete the incoming and outgoing condition inspection reports. Given this breach, **I find** the landlord has provided insufficient evidence to support what condition the rental unit was at the start of the tenancy, and at the end of the tenancy.

As the tenant agreed to compensate the landlord for cleaning in the amount of five hours at \$20.00 per hour for a total of \$100.00, **I grant** the landlord **\$100.00** for cleaning costs, however, **I dismiss** the remainder of this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**. I note that if the tenant did not agree to compensate the landlord for \$100.00 in cleaning costs during the hearing, the landlord would have received no compensation for this portion of his claim as his photos were all undated, and by breaching sections 23 and 35 of the *Act*, the landlord was unable to prove the condition of the rental unit at the end of the tenancy.

Item #3 - The landlord has claimed \$157.50 for damages to a door that allegedly required repair. The landlord referred to photos on part 3 of the CD, photo 4A and photo 2, both of which are not dated. The landlord also referred to document “3-6-2” in

evidence. The tenant stated that she did not notice scratches as claimed by the landlord and did not agree to this portion of the landlord's claim. In keeping with my finding regarding item #2 above, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**. The landlord breached the *Act* by failing to complete an incoming condition inspection report as required by section 23 of the *Act*, and failed to complete an outgoing condition inspection report as required by section 35 of the *Act*.

I caution the landlord to comply with sections 23 and 35 of the *Act* in the future.

Although the tenant offered the landlord compensation of \$100.00 towards cleaning costs, the remainder of the landlord's application did not have merit and as a result, **I do not grant** the landlord the recovery of the filing fee.

I find that the landlord is entitled to **\$100.00** for cleaning costs, as the tenant agreed to compensate the landlord for five hours of cleaning during the hearing, comprised of five hours at \$20.00 per hour. Based on the above, **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of **\$100.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

With the exception of \$100.00 for cleaning costs offered by the tenant to the landlord during the hearing, the landlord's application has been dismissed due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 25, 2014

Residential Tenancy Branch