



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNSD FF

For the landlords: MND MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for a monetary order for the return of her security deposit, and to recover the filing fee.

The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

I have reviewed all evidence before me 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.

Preliminary and Procedural Matters

On March 5, 2014, the hearing commenced and the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The tenant confirmed that she received the landlord’s evidence and had the opportunity to review the landlord’s evidence prior to the hearing. The landlord stated that he had not been served by the tenant with her Application for Dispute Resolution (the “Application”).

The tenant was ordered to serve her application for dispute resolution and any evidence on the landlord by registered mail by March 6, 2014 by 5:00 p.m. and to fax in a receipt to the Residential Tenancy Branch by March 7, 2014 by 5:00 p.m. The tenant was provided the evidence fax number for the Residential Tenancy Branch during the hearing. The landlord was given three days after being served by the tenant to serve rebuttal evidence on both the tenant and the Residential Tenancy Branch. The hearing was adjourned to April 24, 2014 at 1:30 p.m., Pacific Time, and both parties were mailed Notices of a Reconvened Hearing. At the reconvened hearing, only the landlord attended. The tenant failed to fax in the receipt described above by March 7, 2014 by 5:00 p.m., as ordered.

After the ten minute waiting period at the reconvened hearing held on April 24, 2014 at 1:30 p.m., Pacific Time, the tenant's Application was **dismissed in full, without leave to reapply**, as the tenant failed to attend the hearing to present the merits of her Application. Given the above, the hearing proceeded with consideration of the landlord's Application only.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the periodic, month to month tenancy agreement was submitted in evidence. The tenancy began on August 1, 2013. The tenant vacated the rental unit on November 1, 2013. Monthly rent in the amount of \$850.00 was due on the first day of each month. A security deposit of \$425.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The landlord has claimed \$1,200.00 comprised of loss of \$850.00 rent for the month of November 2013, plus \$350.00 for cleaning costs. The landlord testified that the tenant provided no written notice before she vacated, as required by the *Act*. The landlord stated that on November 12, 2013, he applied for dispute resolution claiming towards the tenant's security deposit for loss of rent, plus cleaning costs. The landlord stated that the tenant failed to clean the rental unit before she vacated the rental unit. The landlord confirmed that he did not complete an incoming or an outgoing condition inspection report during the tenancy, and did not submit a receipt or invoice to support the cleaning costs he has claimed.

The landlord is seeking loss of November 2013 rent in the amount of \$850.00 due to the tenant failing to provide proper notice to end the periodic, month to month tenancy under the *Act*. The landlord stated that he received the tenant's forwarding address via text about a month after the tenant vacated the rental unit.

Analysis

Based on the documentary evidence, the landlord's undisputed oral testimony, 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.

Landlord's claim for loss of November 2013 rent – The landlord has claimed \$850.00 for loss of November 2013 rent due to the tenant failing to provide proper notice to end the tenancy in accordance with section 45 of the *Act*. Section 45 of the *Act* 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.

(4) A notice to end a tenancy given under this section **must comply with section 52** *[form and content of notice to end tenancy]*.

[emphasis added]

Based on the above, I find the tenant breached section 45 of the *Act* as the tenant failed to provide written notice to end the tenancy to the landlord. Given the above, I find the landlord has met the burden of proof in establishing that the tenant breached the *Act* and owes **\$850.00** for loss of rent for the month November 2013.

Landlord's claim for cleaning costs – The landlord failed to complete an incoming and outgoing condition inspection report, and failed to submit a receipt or invoice supporting the landlord's claim for cleaning costs. Therefore, I find the landlord failed to meet part three of the four-part test for damages or loss described above. Given the above, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Section 38 of the *Act*, requires that a landlord must return or make a claim against the security deposit within 15 days of the later of the end of tenancy and the date the forwarding address is provided. I find the landlord applied to claim towards the tenant's security deposit in accordance with section 38 of the *Act* within 15 days of the date the tenant vacated the rental unit, which was November 1, 2013, and the landlord's application was dated November 12, 2013. Therefore, I find the landlord did not breach section 38 of the *Act*.

As the tenant's claim was dismissed in full, without leave to reapply, I do not grant the tenant the recovery of the filing fee.

As the landlord's claim did have merit, I grant the landlord the recovery of their filing fee in the amount of **\$50.00**.

The landlord continues to hold the tenant's security deposit of \$425.00, which has accrued no interest since the start of the tenancy.

I find that the landlord has established a total monetary claim of **\$900.00** comprised of \$850.00 in loss of November 2013 rent, plus the \$50.00 filing fee. **I ORDER** the landlord to retain the tenant's full security deposit of \$425.00 in partial satisfaction of the landlord's claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$475.00**. 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

The application of the tenant has been dismissed in full, without leave to reapply.

The landlord established a total monetary claim of \$900.00 and was ordered to retain the tenant's security deposit of \$425.00 in partial satisfaction of the landlord's claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$475.00. 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.

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: April 30, 2014

Residential Tenancy Branch

