



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, SS

Introduction

This hearing was convened by way of conference call in response to applications made by both the Tenant and the Landlord for monetary claims.

The Landlord applied for damage to the rental suite; for unpaid rent or utilities; to keep the Tenant's security deposit; money owed or compensation for loss or damage under the *Residential Tenancy Act* (the "Act") and the recovery of the filing fee.

The Tenant applied for the return of the security deposit; the recovery of the filing fee and a request to serve documents in a different way than required by the Act.

The Landlord and Tenant appeared for the hearing. The Tenant confirmed that he had initially served the Notice of Hearing to the Landlord and realised that it was sent to the wrong address due to an incorrect unit number; the Tenant then re-served the hearing documents to the Landlord by registered mail on January 3, 2014 which the Landlord confirmed receipt of a week later. As both parties confirmed receipt of each other's hearings documents and evidence, I determined that both parties had served these as required by the Act and the Rules of Procedure.

At the start of the hearing the Tenant confirmed that the request to serve documents to the Landlord in a different way than required to the Act was not necessary as he had served the documents to the Landlord. As a result, I amended the Tenant's application to remove this request, pursuant to Section 64(3) (c) of the Act.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed the evidence and testimony before me; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for lost rent as a result of inadequate notice to end the tenancy by the Tenant?
- Is the Landlord entitled to monetary compensation for replacement of the carpet which was claimed to be damaged by the Tenant?
- Is the Landlord allowed to keep the Tenant's security deposit in partial satisfaction of the Landlord's claim?
- Did the Tenant provide the Landlord with a forwarding address in writing as required by the Act?
- Is the Tenant entitled to the return of his security deposit?

Background and Evidence

Both parties agreed that this tenancy started in April, 2010. The Landlord continued the tenancy in 2013 by signing a new tenancy agreement, which was provided as evidence, and shows that the new tenancy of the same rental suite started on August 1, 2013 on a month to month basis. The Tenant paid the Landlord a security deposit in the amount of \$675.00 at the start of the tenancy in August 2010, which the Landlord still retains. Rent was payable by the Tenant in the amount of \$1,400.00 on the first day of each month.

The Landlord did not complete a move in or move out condition inspection report during the tenancy. The Landlord testified that the Tenant provided him with a written notice in the form of an attachment in an e-mail on November 13, 2013. The notice was provided as evidence and shows that the Tenant wanted to end the tenancy on November 30, 2013, which he did.

The Landlord testified that the Tenant did not provide him with a forwarding address in writing when he left on November 30, 2013 or anytime after that. It was not until he had the Tenant's address on the Tenant's Application for Dispute Resolution, which he received in the second week of January, 2014, did he make the application.

The Landlord testified that when he received the Tenant's notice to end the tenancy he tried to make efforts to re-rent the suite by placing advertisements on the internet and even conducted some viewings in November, 2013. However, the Landlord was unable to re-rent the suite until January 6, 2014 because the two weeks in November, 2013 did not allow enough time for potential renters to commit to a tenancy of the rental suite for

December, 2013. As a result, the Landlord testified that he lost rent for December, 2013 which he now claims from the Tenant. The Landlord provided the written tenancy agreement for the new renters in support of his claim.

The Tenant testified that he had provided the Landlord with his PO BOX address verbally at the end of the tenancy and submitted that the Landlord was aware that this was an address to which he could send correspondence to. The Tenant submitted that the Landlord verbally acknowledged the address and also had his phone number and e-mail address so that he was able to verify this address.

The Tenant acknowledged that he had only given the Landlord two weeks of notice to end the tenancy as he had lost his job and did not want to remain in the tenancy when he was unable to pay the rent.

The Landlord testified that when the Tenant left the rental suite he discovered stains and damage to the bedroom carpet. The Landlord provided one photograph of the carpet at the start of the tenancy and two photographs taken of the carpet after the Tenant had vacated. The Landlord testified that the carpets were dirty and the pictures indicated ripples and depressions that had been created in the carpet; the Landlord did not know how these occurred. The Landlord provided a photograph which shows that he replaced the bedroom carpet with a new carpet for a cost of \$400.00 and provided an invoice in support of this claim.

The Tenant denied that the carpets were left dirty as his wife was a fastidious housekeeper who kept the house clean during the tenancy. The Tenant also testified that he did not know how these ripples came to be present in the carpet and submitted that these had occurred after he had left the tenancy. The Tenant admitted to the depressions in the carpet which had been caused by his bed but denied the damage relating to the ripples and the dirty carpet.

Analysis

Section 38 of the Act provides for the rights and obligations of both parties in relation to the return of a Tenant's security deposit at the end of a tenancy. In order to activate the Landlord's obligation to return or make a claim for the security deposit, the Tenant must provide to the Landlord a forwarding address **in writing** within one year of the tenancy ending.

In this case, the Tenant relies on the forwarding address being provided to the Landlord verbally and an understanding that the Landlord should have known this was the

Tenant's address to where the Landlord was to send the security deposit to. In addition, the Tenant also relies on the Landlord being served with the Tenant's Application which contained the Tenant's address.

However, I find that the submissions made by the Tenant in relation to providing the Landlord with the forwarding address do not comply with the Act as there is insufficient evidence to show that this was done in writing and served to the Landlord. I also find that making an Application for Dispute Resolution is not sufficient to meet the requirements of providing a forwarding address pursuant to Section 38 of the Act. Therefore, there was no obligation for the Landlord to make an application or return the Tenant's security deposit and as a result, the Tenant's application was premature.

However, the Landlord did make an application to keep the Tenant's security deposit and as I result, I have examined the Landlord's claim as follows.

Section 45(1) of the Act provides for the Tenant's obligations when ending a month to month tenancy. The Act states that the Tenant must give the Landlord a notice of at least one full **rental** month before ending the tenancy.

As a result, I find that the earliest time the Tenant could have legally ended the tenancy after giving notice in the middle of November, 2013, would have been at the end of December, 2013. However, the Tenant left the tenancy at the end of November, 2013. I accept the evidence of the Landlord that he tried to re-rent the suite but was unable to do so because the limited time did not allow potential renters to commit to an immediate tenancy without them first having to give legal notice for their own tenancy. As a result, I find that the Tenant is liable for lost rent for the month of December, 2013 in the amount of **\$1,400.00** as claimed by the Landlord during the hearing.

In relation to the Landlord's claim for the replacement of the carpet in the amount of \$400.00, I find, in the absence of a condition inspection report which would have potentially provided sufficient comparative evidence of this damage, I have had to rely on the remaining evidence provided by the parties.

The Landlord claims that the carpet was left dirty. However, I find that the limited amount of photographs provided by the Landlord is not sufficient to show that the carpet was dirty. I have examined the before and after photographs and they are not of good enough quality to show that the carpet was dirty. The photographs do indicate ripples in the carpet which the Landlord claimed were done by the Tenant but this was denied by the Tenant. As a result, the evidence results in one party's word against the other. In addition, I also find that the Landlord failed to provide sufficient evidence to show why a

carpet with ripples could not be re-stretched or a dirty carpet could not have been cleaned. Therefore, I find that the Landlord has failed to provide sufficient evidence to show why a monetary award for the **replacement** of a carpet should be granted.

As the Landlord has been successful in the majority of his claim, I award the Landlord the **\$50.00** filing fee for the cost of making the application pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the landlord is \$1,450.00.

As the landlord already holds a \$675.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$775.00.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$775.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment in accordance with the Landlord's instructions.

The Tenant's application for the return of the security deposit and the filing fee is dismissed without leave to re-apply.

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: April 03, 2014

Residential Tenancy Branch

