



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD

Introduction

There are applications filed by both parties. The landlord seeks a monetary order for damage to the unit, site or property and for unpaid rent. The tenant seeks a monetary order for the return of double the security deposit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on July 1, 2013 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$850.00 payable on the 1st of each month. No condition inspection reports for the move-in or the move-out were completed by the landlord.

The tenant states that a \$425.00 security deposit was paid, even though the signed tenancy agreement states, \$450.00. The tenant states that she was issued a receipt for \$425.00. The landlord provided no details.

The landlord seeks a monetary order for damage of \$3,020.00 which consists of an estimated \$2,491.88 and \$2,095.59 for damaged laminate floors, \$500.00 for the cost of

a damaged dryer, \$300.00 for 10 hours of cleaning and \$120.00 for unpaid rent as the tenant over held the rental for 4 days. I note the landlord's monetary claim is a range from \$3,015.59 to \$3,411.88 based upon the estimates. The tenant has disputed the claims made by the landlord, stating that the unit was left "clean and in good condition". The landlord relies on photographs of text messages from the tenant to the landlord dated January 19, 2014 which states that the tenant vacated the rental unit on the 15th. The messages also states that the tenant left items including cleaning supplies at the rental unit. The tenant has confirmed in her direct testimony the contents of the photographs of the kitchen. The landlord has provided copies of two estimates for the replacement costs of the floor. The tenant has provided a copy of a letter from a witness, M.P. and R.P. who state that, "we observed the suite to be clean and in good condition, smelling very fresh and clean." Another letter from a witness, P.S. who states, "...my perception was that little cleaning remained or was needed other than to sweep and vacuum after the removal of the few remaining items." The tenant stated that the landlord was notified on the 14th of vacating the rental unit and that the keys were left on the counter. The landlord disputed this stating that the tenant had never notified him until the 19th and that the keys were never returned.

The tenant seeks a monetary order for the return of double the \$425.00 security deposit as the she states that the landlord did not return the security deposit within the 15 day period following the end of the tenancy nor did he file an application to dispute the return of the security deposit. The tenant states that the forwarding address was given to the landlord in writing on January 9, 2014 and again via text message on January 19, 2014 as shown by the submitted documentary evidence.

Analysis

I find on a balance of probabilities based upon the submitted testimony of both parties that the tenancy ended on January 15, 2014. Although the landlord claims that the tenant overheld the rental, I find based upon the landlord's documentary evidence that the landlord was informed that the tenant had vacated the rental unit as stated by the tenant on the 15th via text. A response by the landlord, "where are the keys?" shows that the landlord acknowledged the message. On the issue of unpaid rent of \$120.00 for overholding the rental for 4 days between January 15 to January 19, I find that the landlord has failed to establish a claim. The landlord has failed to provide sufficient evidence to show that the tenant over held the rental and did not notify the landlord upon vacating the rental unit. This portion of the claim is dismissed.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the landlord has failed to provide sufficient evidence that damage occurred due to the negligence or by any actions of the tenant. The landlord relies on a photograph of a portion of damaged flooring as well as estimates for work not yet performed or paid. The tenant has provided copies of letters from two witnesses who could describe the condition of the rental unit at the end of the tenancy. The landlord's claim for damages for the flooring is dismissed.

I also find that the landlord has failed to provide sufficient evidence that the tenant caused damage to the dryer. The landlord's claims are disputed by the tenant and the landlord has not provided sufficient evidence to satisfy me that the dryer was damaged or how much the cost of the dryer would be as the landlord has not replaced the damaged dryer. This portion of the claim is dismissed.

On the issue of cleaning, I find that the landlord has failed to provide sufficient evidence to satisfy me of the claim for 10 hours of cleaning for \$300.00. The landlord has not provided any details of the extent of cleaning required or of the cost involved. Instead the landlord relies on photographs of a disorganized kitchen and cupboard which the tenant has acknowledged. The landlord has not established sufficient evidence for the monetary claim, however based upon the tenant's direct testimony has established that the tenant failed to leave the rental in an acceptable manner. On this basis, I find that the landlord is entitled to a nominal award of \$20.00 for the organization and clean up based upon the two photographs submitted by the landlord.

On the tenant's request for a monetary order for the return of double the security deposit of \$425.00, I find that the tenant has established a claim.

Section 38 of the Residential Tenancy Act states,

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

The tenancy ended on January 15, 2014. The tenant provided her forwarding address in writing to the landlord on January 9, 2014 and again via text on January 19, 2014. It is clear based upon the undisputed testimony of the tenant that the landlord failed to apply for dispute resolution to dispute the return of the security deposit. I find that the tenant has established a monetary claim of \$850.00 for the return of double the security deposit.

In offsetting these claims, landlord's \$20.00 claim against the tenant's \$850.00 claim, I grant a monetary order for \$830.00 for the tenant. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$830.00.

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: June 10, 2014

Residential Tenancy Branch

