



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF, MNSD, RPP

Introduction

There are applications filed by both parties. The landlord seeks a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss and recovery of the filing fee. The tenant also seeks a monetary order for money owed or compensation for damage or loss, for the return of double the security deposit, for the return of personal property and recovery of the filing fee.

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

The landlord disputes the late evidence package submitted by the tenant on June 23, 2014, but was not received by him until June 25, 2014 which is not within the allowed timeframe for submitting evidence. The landlord seeks that the late evidence not be considered for the hearing. The tenant states that the documentary evidence is crucial to her application. In the interest of fairness, I find that the tenant's late documentary evidence is admissible for the hearing. The landlord has not stated that he requires more time to respond to any of the late evidence provided by the tenant only citing procedural fairness as it was received late.

During the hearing the landlord withdrew his \$500.00 claim for time and effort in responding to the tenants claims. As such no further action is required for this portion of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Is the tenant entitled to a monetary order?

Is the tenant entitled to an order for the return of personal property?

Background and Evidence

This tenancy began on July 1, 2013 on a 1 year fixed term tenancy ending on June 30, 2014 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement dated June 14, 2013. The monthly rent is \$850.00 payable on the 1st of each month and a security deposit of \$425.00 was paid. No condition inspection reports for the move-in or the move-out were completed.

The landlord seeks a monetary claim of \$1,555.00 which consists of \$150.00 for the repair of a hot water tank closet door, \$80.00 for the replacement of a drill lock to the rental unit entry door, \$1,275.00 for the loss of rental income equal to 1 ½ months rent as the tenant vacated the rental unit on April 1, 2014 without proper notice and the landlord was not able to re-rent the unit May 15, 2014.

The tenant seeks a monetary claim of \$1,510.00 which consists of \$425.00 for the return of ½ of march rent paid due to harassment by the landlord, \$35.00 for the cost of locksmith to drill out the lock as the landlord replaced the lock on the rental unit door without her knowledge, \$35.00 as compensation for a motion detector light still on the property, return of double the \$425.00 security deposit and compensation for missing tools totalling, \$165.00

Both parties agreed that the tenant provided the landlord with notice to vacate the rental unit before the end of the fixed term tenancy on April 1, 2014. Both parties also agreed that the tenant provided her forwarding address by text on April 2, 2014 instead of in writing.

The landlord states that the tenant damaged a lock that was installed on the closet door during the tenancy to the hot water tank to prevent the tenant from adjusting the hot water temperature for the entire house. The lock was installed by the landlord's handyman who is also a tenant of the upstairs unit. The tenant disputes this claim

stating that the door was taken down by the other tenants. The landlord disputes this stating that the upstairs tenants have not entered into the tenant's rental unit.

The tenant states that she hired a locksmith which cost her \$35.00 and has submitted a handwritten invoice dated March 31, 2014. The landlord disputes this stating that the lock upon review was not removed by a locksmith but drilled. The landlord has provided a video of the door which shows the lock drilled.

Both parties have confirmed that the tenancy ended on April 1, 2014 and that the fixed term tenancy was until June 30, 2014 and as such, the tenant has prematurely ended the fixed term tenancy. The landlord states that he informed the tenant that they were still responsible for the end of the fixed term tenancy, but that the landlord would make all reasonable attempts at re-renting the unit. The landlord states that he immediately began advertising the rental unit on March 3, 2014, but without any success until May 15, 2014. The tenant disputes the landlord's claims.

The tenant seeks compensation of \$425.00 equal to $\frac{1}{2}$ of the monthly rent due to harassment by the landlord. The tenant states that the landlord repeatedly texted her regarding the end of the tenancy and that the landlord was allowing another tenant to enter her rental unit and steal her personal property. The landlord disputes stating that the tenant has provided no evidence to support this claim.

The tenant requests the return of missing items, a 3 tier mastercraft tool box with tools for \$65.00, a 100 ft. orange extension cord for \$45.00 and 1 mastecraft hammer and 1 stanley hammer for \$55.00. The tenant states that after she moved out the bulk of her belongs she returned on March 30, 2014 and had the police attend as the landlord would not allow her entry. The tenant states that these items were left to be picked up at a later time. The landlord disputes this claim stating that there were no belongings left in the rental unit after the tenant vacated. The landlord states that this is confirmed by the police who attended and reported that there was nothing left in the rental unit when they attended.

The tenant seeks the return of double the \$425.00 security deposit as the landlord has failed to return it within the allowed time frame. It was confirmed by both parties that the tenancy ended on April 1, 2014 and the landlord's application was filed on June 1, 2014. It was also confirmed by both parties that the landlord received the tenant's forwarding address via text on April 2, 2014.

Analysis

I accept the evidence submitted by both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant.

On the landlord's claim of \$150.00 for the repair of the closet hot water tank door, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The tenant has disputed this portion of the claim and the landlord has provided evidence of the broken lock on the closet door via photographs and a receipt from his handyman for the cost of \$150.00 for repair of this door.

I find it highly unlikely that a professional locksmith would charge \$35.00 for a late night call out for 2 hours of work for a service call. The video provided by the landlord conclusively shows that the lock was drilled and not removed by a locksmith that took 2 hours as reported by the tenant. I prefer the evidence of the landlord over that of the tenant. The tenant's claim of \$35.00 is dismissed and I find that the landlord has established a claim for recovery of \$80.00 for the replacement of the lockset as shown by the submitted copy of the receipt from the landlord's handyman.

I accept the undisputed evidence of the landlord and find that the tenant did prematurely end the fixed term tenancy on April 1, 2014 before the end of the fixed term on June 30, 2014. I also find that the landlord made reasonable attempts at mitigating any possible losses by re-advertising the unit for rent starting on March 3, 2014. The landlord has established a monetary claim for loss of rental income of \$1,275.00.

The tenant has failed to provide sufficient evidence to satisfy me for this portion of the claim regarding the claim of harassment and the return of missing items. The tenant has not proved sufficient evidence of loss and as well that the actual cost of what it would take to replace these items being sought. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. These portions of the tenant's monetary claim are dismissed.

Section 38 of the Residential Tenancy states,

SECURITY DEPOSIT RETURN

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(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.

It is clear based upon the direct testimony of both parties that the landlord received the tenant's forwarding address via text on April 2, 2014 after vacating the rental unit on April 1, 2014. The landlord's application for dispute resolution was not filed until June 6, 2014 which is clearly after the allowed 15 day time period. Pursuant to Section 38 (6), the landlord having failed to comply with Section 38 (1) of the Act, the landlord failed to return the \$425.00 security deposit or file an application for dispute resolution to dispute the return of the security deposit within 15 days of the end of the tenancy or when he received the tenant's forwarding address in writing on April 2, 2014. The tenant has established a claim of \$850.00 for the return of double the \$425.00 security deposit.

The landlord has established a total monetary claim of \$1,505.00 consisting of \$150.00 for repair costs to the hot water tank closet door, \$80.00 for replacement of a lock set and \$1,275.00 for the loss of rental income as the tenant prematurely ended the fixed term tenancy and the unit was not re-rented for 1 ½ months. The landlord is also entitled to recovery of the \$50.00 filing fee.

The tenant has established a total monetary claim of \$850.00 for the return of double the security deposit as the landlord failed to comply with the Act. The tenant is also entitled to recovery of the \$50.00 filing fee.

In offsetting these claims, I find that the landlord is entitled a monetary order for \$655.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$655.00.

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: July 09, 2014

Residential Tenancy Branch

