



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF, MNDC

Introduction

There are applications filed by both parties. The landlord seeks a monetary order for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. The tenant also seeks a monetary order for money owed or compensation for damage or loss, the return of the security deposit and recovery of the filing fee.

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 submitted by the other party, I am satisfied that both parties have been properly served.

The landlord has confirmed receipt of the tenant's documentary evidence package, but states that she filed her own documentary evidence late as it was just submitted two days prior to the hearing in response to the tenant's own evidence just prior to the deadline. The landlord stated that the documentary evidence was her own written statements in response to the tenant's documentary statements. The landlord requested an adjournment for the documentary evidence to be considered. The landlord was advised that if the documentary evidence was just her written statements that she could respond during the hearing with the same statements within her direct testimony. The adjournment was deemed unnecessary and the hearing proceeded.

The hearing was adjourned due a lack of time. The tenants stated that they have a new mailing address which they have failed to update. The new address was provided and will be updated for the new notice of an adjourned hearing letter and in the tenant's application.

The adjourned hearing resumed with both parties on August 27, 2014 where both parties participated and provided testimony.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?
Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on May 1, 2013 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,275.00 payable on the 1st of each month and a security deposit of \$637.50 was paid on June 1, 2013. No condition inspection report for the move-in was completed. A condition inspection report for the move-out was completed on March 31, 2014. Both parties agreed that the tenant provided a notice to vacate the rental unit on March 2, 2014 in a letter dated March 1, 2014 and their forwarding address in writing to the landlord on March 29, 2014.

The landlord states that the tenant failed to provide proper notice to vacate the rental unit by giving notice to end the tenancy on March 2, 2014 in a letter dated March 1, 2014 to the landlord to end the tenancy on March 31, 2014. The landlord states that the rental unit was advertised on April 1, 2014 for rental on April 1, 2014 and she was able to re-rent the unit for April 15, 2014. The tenant states that the landlord did not advertise the rental unit until April 1, 2014 and failed to properly mitigate the rental loss as the unit could not be re-rented for April 1, 2014 as the landlord failed to begin advertising the rental unit when she was notified on March 2, 2014. The landlord seeks compensation of \$637.50 for the loss of rental income as the landlord was unable to re-rent the unit until April 15, 2014. The landlord also seeks recovery of \$20.00 for the cost of Registered Mail costs.

The tenant seeks a monetary claim for the loss of quiet enjoyment totalling, \$3,075.00 which consists of \$1,275.00 for the loss of use due to the tenant suffering through constant repairs where the landlord failed to provide proper notice for entry on 3 different occasions for 14 days in February and 9 days in July for approximately 2 hours on each occasion. The tenant seeks \$525.00 in compensation for the loss of privacy where the landlord on one occasion opened 1 letter without permission and that the tenant's privacy was invaded because the landlord or the landlord's agent knocked on her door disturbing her. The tenant also states that they suffered through constant harassment and threats of expulsion. The tenants also state that the landlord intrudes by leaving numerous notes. The tenant also seeks \$637.50 for the return of the security deposit as the landlord has failed to return it.

The tenant states that they have suffered through constant repair issues causing a loss of quiet enjoyment of the rental as the landlord failed to provide proper notice of entry. The tenant state that the landlord had improvements done to the rental unit that had a succession of tradespersons attending for on 3 different occasions for a total of 14 days in February and 9 days in July. The tradespersons would attend without notice to work on the bathroom, windows and mold problems. The tenant also states that because of the constant interruptions for example the landlord has opened the tenants mail without permission. The landlord disputes the tenants' claims stating that the landlord responded appropriately upon being notified of issues in the rental and has submitted documentary evidence from the contractor who states that notice was provided to the tenants on each occasion of entry in advance and that the tenants were provided detailed communication on the status of repairs and entry for trades. The landlord noted that this was supported in the tenant's submitted documentary evidence. The landlord also clarified that the tenant's letter was opened in error and that the landlord immediately apologized when she delivered the mail to the tenants. The landlord also stated that the area of intrusion noted by the tenant was a common area and that the landlord or the landlord's agent knocked on the tenant's door to communicate that the laundry cycle on the washer/dryer that was started by the tenant was finished.

Analysis

Residential Tenancy Branch Policy Guideline #5 states,

"Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the

nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.”

It is clear based upon the undisputed evidence of both parties that the landlord received the tenant's notice to vacate the rental unit improperly late. Notice should have been served by the tenant upon the landlord the day before rent was due on February 28, 2014 which would have satisfied the Act. However, the landlord failed to provide a duty to minimize the possible losses of rent and instead did not advertise the rental unit until April 1, 2014 for occupancy on April 1, 2014. It is no wonder that the landlord was not able to re-rent the unit until April 15, 2014. In these circumstances, I find that the landlord has failed to provide her duty to mitigate any possible losses of rental income. The landlord's monetary claim is dismissed.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (Registered Mail) is dismissed.

The landlord's application is dismissed.

As for the tenant's claims, I find based upon the evidence submitted by both parties that there were issues with repairs which were dealt with in a reasonable and timely fashion. As such, the tenant's claim for a loss of quiet enjoyment is dismissed as I find that the tenant suffered a necessary disruption so that the landlord could fulfill her responsibilities in properly maintaining the rental property.

On the tenant's claim for a loss of privacy, I find that the tenant has failed to provide sufficient evidence to satisfy me that a true disruption occurred breaching the tenant's privacy. Both parties confirmed that the loss of privacy confined to the landlord opening 1 letter on one occasion in error and that the landlord's agent knocked on the tenant's door to tell them their laundry was done in the shared washer/dryer. I find that these are minor inconveniences and are not intrusions where the tenant's privacy was invaded. This portion of the tenant's claim is dismissed.

I find that the tenant is entitled to the return of the \$637.50 security deposit. The tenant having been partially successful is entitled to recovery of the \$50.00 filing fee. I grant a monetary order under section 67 for the balance due of \$687.50. 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's application is dismissed.

The tenant is granted a monetary order for \$687.50.

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: August 27, 2014

Residential Tenancy Branch

