



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF
 MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by both the Tenant and the Landlord.

The Landlord applied for a Monetary Order for unpaid rent, damage to the rental unit, to keep the Tenant’s security and pet damage deposits, and for money owed or compensation for loss under the *Residential Tenancy Act* (the “Act”). The Tenant applied for the return of double his security and pet damage deposits. Both parties also applied to recover the filing fee for the cost of making their Application.

An agent for the Tenant and the Landlord named on the Application appeared for the hearing and provided affirmed testimony during the hearing as well as documentary evidence in advance of the hearing.

Preliminary Issues

The Landlord confirmed receipt of the Tenant’s Application and written evidence. However, the Tenant’s agent denied receipt of the Landlord’s Application and testified that she had only received a portion of the Landlord’s written evidence.

The Landlord testified that she had served the Tenant with a copy of the Application and her documentary evidence by registered mail pursuant to Section 89(1) (c) of the Act, but that this had been returned to her because the Tenant had failed to pick it up.

Section 90(c) of the Act states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. Therefore, I determined that the Landlord had served the required documents in accordance with the Act.

Issues to be Decided

- Is the Landlord entitled to unpaid rent and damages to the rental suite?
- Is the Landlord or Tenant entitled to the security and pet damage deposits?

Background and Evidence

Both parties agreed that this tenancy started on October 15, 2013 on a month to month basis. Rent was established in a written tenancy agreement for the amount of \$1,200.00 payable by the Tenant on the 15th day of each month; however, this was changed through mutual agreement in December, 2013 to be paid on the first day of each month.

The Tenant paid the Landlord a security deposit in the amount of \$600.00 and a pet damage deposit in the amount of \$300.00 on October 4, 2013, both of which the Landlord still retains.

The Landlord did not complete a move in Condition Inspection Report (the "CIR") at the start of the tenancy and although the parties disagreed about the circumstances of the move out inspection, no move out CIR was conducted.

The Landlord testified that the Tenant vacated the rental suite at the end of January, 2014 and provided her with a forwarding address in a written letter dated April 22, 2014 which was sent by registered mail. The Landlord made the Application to keep the Tenant's security deposit on May 9, 2014.

The Tenant's agent submitted that because she had not received the Landlord's Application she was not aware of nature of the Landlord's monetary claim. I was satisfied that the Landlord had submitted the written evidence being relied upon at the hearing, but I asked the Landlord to provide a detailed breakdown of her monetary claim during the hearing for the purposes of the Tenant's agent.

The Landlord's Application details a total monetary claim of \$3,167.30. However, the Monetary Order Worksheet which provides for a breakdown of this amount only disclosed an amount for \$1,727.88. The Landlord was asked to explain the breakdown and the confusion in the amounts from the onset of the hearing. The Landlord explained that she was claiming for the following amounts:

- \$1,000.00 for unpaid rent
- \$315.34 for damages to the rental unit walls

- \$360.00 for carpet cleaning and replacement
- \$621.51 for the repair and replacement of a dishwasher
- \$490.00 for the storage and disposal costs of property left behind by the Tenant
- \$50.00 for the recovery of the filing fee.

The Landlord testified that she had agreed with Tenant to reduce his rent by \$200.00 for a couple of months starting from August, 2014 as he was in financial hardship with the intention that he would pay this amount back once he was in a position to make full payments again.

However, the Tenant continued to make \$1,000.00 rent payments to the Landlord without giving the Landlord the outstanding rent as agreed which continued until the tenancy ended; the Landlord acknowledged that she should have dealt with this issue earlier and not let this go on for any longer than it did. The Landlord now claims the extra \$200.00 in unpaid rent for the six months that it was not paid by the Tenant.

The Tenant's agent submitted that the Landlord had reduced the rent and that by accepting it for such a long period of time, it had been accepted by the parties that this was the new rent payable under the agreement. This was disputed by the Landlord.

The Landlord made a number of submissions in relation to her claim for damages to the rental suite. The Landlord submitted that the Tenant left holes in the rental unit walls which all had to be filled and repaired. This was disputed by the Tenant's agent and the Landlord provided no supporting evidence of this damage apart from receipts and invoices for the cost of materials for the repairs.

The Landlord testified that the Tenant had not cleaned the carpets and that the bedroom carpets were professionally cleaned but the living room carpet was replaced because the stains could not be removed. The Landlord referred to one photograph showing the rental living room carpet before the tenancy started and one photograph indicating stains to the carpet after the Tenant had left. The Landlord provided invoices to support the cost of replacing the carpet.

The Tenant's agent submitted that the carpets were cleaned by the Tenant at the end of the tenancy but the carpets were already stained at the start of the tenancy which was not an issue to the Landlord as she was intending to replace the carpet. The Tenant's agent did not know when the photographs of the carpets had been taken.

The Landlord testified that the Tenant had broken the dishwasher and that she had called a company to complete the repair who in turn verbally explained that it would be better for her to replace the dishwasher than to repair it. As a result, the Landlord purchased a dishwasher which she now claims from the Tenant. The Tenant's agent denied that the Tenant damaged the dishwasher.

The Landlord claims that the Tenant left behind large items of personal property which she has had to store, and continues to do so, for eight months at a cost of \$30.00 per month at a friend's residence; this includes items such as a deep freezer and a car roof rack which the Landlord deemed to be over \$500.00 in total value. The Landlord provided an estimate for the cost of removing these items from a professional company who indicated that this would cost in the region of \$200.00 to \$250.00 which the Landlord now claims from the Tenant. In support of this the Landlord presented text message evidence between her and the Tenant which indicates that the Tenant acknowledged leaving these items behind.

The Tenant's agent claimed that the Landlord should have disposed of the property left behind at the dump rather than store it and incur unnecessary expenses to claim back from the Tenant.

Analysis

Firstly, I find that by taking into account the deeming provisions of Section 90(a) of the Act, the Landlord had from April 28 to May 12, 2014 to make an Application in accordance with the time limits set by Section 38(1) of the Act. As a result, I find that the Landlord made the Application to keep the Tenant's deposits in accordance with the Act.

In relation to the Landlord's claim of unpaid rent, I find that the Tenant signed a tenancy agreement with the Landlord to pay \$1,200.00 per month and I accept the Landlord's evidence that she provided the Tenant some leeway in paying a reduced amount which was dependant on the Tenant still returning the residual amount at a later date. I do not accept that the Landlord agreed to a permanent change in the rent amount by accepting a lesser amount; rather, I rely on the unchanged written tenancy agreement between the parties for an amount of \$1,200.00 which the Tenant was liable to pay during the tenancy. Therefore, I find that the Tenant is liable for the **\$1,000.00** in unpaid rent for the last six months of the tenancy.

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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

In examining the evidence of the Landlord relating to the damages to the wall, the carpet cleaning and the dishwasher repair, I find that the Landlord's evidence is very weak to support these claims. The Landlord failed to complete a move in and move out CIR which would have been useful and conclusive comparative evidence of these damages. However, the Landlord relies heavily on her verbal testimony and the invoices verifying the costs for the majority of her evidence relating to these claims.

I find that two photographs of the carpets are not sufficient to justify an award for carpet cleaning and there is no supporting evidence around the reasons why the carpet in the living room had to be replaced. There is also not sufficient evidence of holes in the walls and how the repair costs related to this damage.

I also find that there is not sufficient evidence to show that the Tenant was the one responsible for causing damage to the dishwasher and there is no expert evidence to explain why a new dishwasher was required.

The Landlord claimed that she did have other comparative evidence from previous and current renters as to the condition of the rental suite but this was not provided in written evidence before me. As a result, I dismiss the above claims made by the Landlord for damages to the unit.

However, I do find that the Landlord presented sufficient evidence in the form of invoices verifying the loss and the text message evidence to justify a case to claim costs

for dealing with the Tenant's possession which were abandoned at the end of the tenancy.

After explaining the provisions of Part 5 of the Residential Tenancy Regulation to both parties and alluding to the fact that a Landlord must store a Tenant's personal belongings which have been abandoned at the end of a tenancy for a period of 60 days before disposing of them, the Tenant's agent and Landlord mutually agreed to settle this portion of the Landlord's Application in the amount of **\$260.000**.

As the Landlord has been the only successful party in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,310.00.

As the Landlord already holds the Tenant's **\$900.00** deposits, 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 **\$410.00** in monetary compensation.

This balance left outstanding was explained to the parties during the hearing and the parties were agreeable to this amount.

Conclusion

For the reasons set out above, I hereby grant a Monetary Order in the amount of **\$410.00** in favor of the Landlord pursuant to Section 67 of the Act. 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.

The Tenant's Application is dismissed.

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: September 12, 2014

Residential Tenancy Branch

