



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord testified that she sent a copy of her original dispute resolution hearing package including a copy of her application for dispute resolution to the tenants by registered mail on May 21, 2014. She entered into written evidence a copy of the Canada Post Tracking Number and the returned envelope to demonstrate her service of the hearing package. Although section 89(1) of the *Act* allows a landlord to serve a copy of the application for dispute resolution to the tenant by registered mail, the landlord confirmed that she sent this package to the dispute address, an address which the landlord realized the tenants had vacated by May 13, 2014. The service of an application by registered mail to a tenant's former address would not normally comply with the provisions of section 89(1) of the *Act*. However, the female tenant gave sworn testimony, undisputed by the male tenant, that both tenants received a copy of the landlord's dispute resolution hearing package by email in advance of this hearing sufficient for them to attend this hearing and dispute his application. Under these circumstances, I find that the tenants have been sufficiently served with notice of this hearing and the landlord's application for dispute resolution to enable me to consider the landlord's application for dispute resolution.

While the tenants said that they had received the landlord's dispute resolution hearing package including a copy of her application for dispute resolution, the tenants testified that they had not received a copy of the landlord's written and photographic evidence package. The landlord confirmed that she had not sent this evidence package to the tenants because the tenants had not supplied her with their forwarding address at the end of this tenancy. The tenants confirmed that they had not provided their forwarding address to the landlord. Under these circumstances, I advised the parties that I could not consider the landlord's written and photographic evidence package as she had made no attempt to serve this evidence to the tenants or obtain a substituted service order to serve it to them in a way not authorized under the *Act*. Although I proceeded without the landlord's written and photographic evidence, the landlord did provide sworn oral testimony regarding some of the details of the tenancy, including the signed Residential Tenancy Agreement (the Agreement) between the parties.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties confirmed that the parties signed the Agreement on June 21, 2013, for a fixed- term tenancy that was to begin on July 15, 2012. The tenancy continued as a periodic tenancy when the initial fixed term expired on July 30, 2013. According to the terms of the Agreement, monthly rent was initially set at \$2,400.00, payable on the first of each month, plus heat and hydro. After the first year, the parties agreed that the landlord agreed to reduced the monthly rent to \$2,300.00, payable again on the first of each month. The landlord continues to hold the tenants' \$1,200.00 security deposit paid on July 3, 2012.

Although the landlord testified that she conducted a joint move-in condition inspection and prepared a report of that inspection, the tenants claimed that no report of that inspection was prepared or issued to them. Even in the landlord's written evidence package that I cannot consider there was no copy of a joint move-in or move-out condition inspection report. The landlord testified that she conducted her own inspection of the rental unit at the end of this tenancy. She did not submit a copy of any report of that inspection to the Residential Tenancy Branch.

The female tenant (the tenant) testified that on or about April 15, 2014, she and the male tenant notified the landlord of their intention to end this tenancy by way of an email

of May 15, 2014. She said that since the tenants moved into the rental unit on the 15th of the month, their tenancy should end on the 15th of the month. She also testified that the landlord re-rented the rental unit by May 15, 2014. The tenants testified that they paid the landlord \$1,150.00, representing rent for the first half of May 2014 on May 1, 2014. Both tenants testified that the landlord did not issue them a receipt for this rent payment or any other rent payment during the course of this tenancy, although they asked for receipts.

The landlord's amended application for a monetary award of \$3,725.00 included the following items:

Item	Amount
Unpaid May 2014 Rent	\$2,300.00
Late Fees	150.00
Garbage Removal and Dumping Fees	175.00
Carpet Cleaning	200.00
Fireplace Repair	150.00
Curtain Damage	150.00
Damage to Walls and Doors	600.00
Total of Above Items	\$3,725.00

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for May 2014, the tenants would have needed to provide their notice to end this tenancy before April 1, 2014. Section 52 of the *Act* requires that a tenant provide this notice in writing. I find that the tenants did not provide their written notice to end this tenancy in compliance with the provisions of section 45(1) of the *Act*. In addition, their emailed notice to end their tenancy does not meet the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

There is disputed evidence as to whether the tenants paid any rent for May 2014, the last month of their tenancy. The tenants claimed they paid the landlord one-half month's rent in cash on May 1, 2014, and received no receipt for their payment. The landlord testified that they made no such payment. In most situations, I would not accept that tenants would pay cash for their rent without receiving a receipt. However, the landlord agreed that she had never issued receipts for the tenants' rental payments.

As it is the landlord's responsibility to issue receipts for cash payments of rent, I find that it is the landlord's practice of failing to issue receipts that stands in the way of establishing documented evidence of rental payments for May 2014. Under these circumstances, I find that the landlord's failure to issue receipts during this tenancy places her in the position of being unable to successfully refute the tenants' claim that they paid one-half of their May 2014 rent on or about May 1, 2014. As such, I find on a balance of probabilities that the only lack of payment of rent by the tenants for this tenancy was for the final half of May 2014. Although the tenants identified May 15, 2014 as the end date for their tenancy, I find that the effective date of their notice to end this tenancy automatically corrects to May 31, 2014.

Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Although the tenants maintained that the landlord re-rented the premises as of May 15, 2014, the landlord testified that new tenants took possession of the rental unit on June 1, 2014, at a monthly rent of \$2,500.00.

Based on a balance of probabilities and on the basis of the work identified as necessary in the landlord's application to restore the condition of the rental unit, I find it more likely than not that the landlord was unable to re-rent the premises for the remainder of May 2014, as declared by the landlord. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for the final one-half of May 2014. As such, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenants' exposure to the landlord's loss of rent for May 2014. I issue a monetary award in the landlord's favour in the amount of \$1,150.00 for the landlord's loss of rent for the final half of May 2014.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

In this case, there is conflicting evidence as to whether a joint move-in condition inspection report was created and provided to the tenants as required by section 23(4),(5) and (6) of the *Act*. The landlord produced no written evidence of any such report and similarly failed to provide any evidence of a move-out condition inspection report. Section 24 of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 (2) *The right of a landlord to claim against a security deposit... for damage to residential property is extinguished if the landlord...*

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Sections 35 and 36 of the *Act* provide similar provisions with respect to move-out condition inspections and the preparation of reports. While it is possible that the tenants' abandonment of the rental unit extinguishes the landlord's responsibilities in preparing a move-out condition inspection report, the landlord is still required to provide evidence that any damage arose out of the tenants' actions during the tenancy and not as a result of reasonable wear and tear.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in condition inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited. However, I also note that section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. However, the tenant did confirm that the tenants left some materials behind at the end of this tenancy. The tenants maintained that the cost of removing such items would not have resulted in the landlord's expenditure of \$175.00. Based on a balance of probabilities, I find that the tenants did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean, and undamaged" as some cleaning and repair was likely required by the landlord after the tenants vacated the

rental unit. For that reason, I find that the landlord is entitled to a monetary award of \$150.00 for general cleaning and repairs that was required at the end of this tenancy.

I dismiss the remainder of the landlord's claim as she has not supplied sufficient evidence to demonstrate her entitlement to any further monetary award.

The landlord is allowed to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been partially successful in her application, I allow the landlord to recover her filing fee from the tenants.

Conclusion

I issue a monetary Order in the following terms, which allows the landlord to recover unpaid rent, damage and the filing fee for her application and to retain the tenants' security deposit:

Item	Amount
Unpaid One-Half of May 2014 Rent	\$1,150.00
General Cleaning and Repairs	150.00
Less Security Deposit	-1,200.00
Filing Fee	50.00
Total Monetary Order	\$150.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 30, 2014

Residential Tenancy Branch

