



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damage to the rental unit; unpaid rent or utilities; to keep all of the Tenant’s security deposit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee.

The Landlord, the Tenant and her Legal Advocate appeared for the hearing. The Landlord and Tenant both provided affirmed testimony and the Tenant’s Legal Advocate made submissions. Both parties also provided written evidence prior to the hearing which was received by each other.

The hearing process was explained and the parties were asked if they had any questions.

Preliminary Issues

At the start of the hearing the Landlord disclosed a monetary claim which was greater than the amount claimed on his Application. The Landlord has sought to increase his monetary claim in the submission of his written evidence. The Landlord was informed that an amendment to an Application, such as an increase in the amount claimed, needs to be follow Rule 2.11 of the Rule of Procedure. As a result, I only considered the Landlord’s monetary claim in the amount requested on his Application as this is the amount the Tenant was put on notice for.

The Landlord was also informed that portions of his claim that related to preparation for dispute resolution proceedings such as: registered mail costs; stationary and consumables costs; travelling time and vehicle usage costs; are not awarded and these are costs that must be borne by a claimant as part of the process.

Issue(s) to be Decided

- Did the Tenant end the tenancy in accordance with the Act?
- Is the Landlord entitled to loss of rent for June, 2014?
- Is the Landlord entitled to costs associated with damage, cleaning and carpet cleaning of the rental suite?
- Is the Landlord entitled to keep all of the Tenant's security deposit in partial satisfaction of his claim?

Background and Evidence

Both parties had the same Landlord and Tenant relationship for a previous rental unit. The tenancy for this rental suite started on February 17, 2014 on a month to month basis. Rent was payable by the Tenant in the amount of \$640.00 on the last day of each month. The Tenant paid two installments of \$160.00 each as a security deposit for the previous tenancy by December, 2013, which was then applied to this tenancy. The Landlord retains the Tenant's security deposit in the amount of \$320.00.

The Landlord confirmed that he had not completed a move in Condition Inspection Report (the "CIR") at the start of the tenancy because the rental suite was newly renovated and that a move out CIR was not completed because the Tenant abandoned the rental unit at the end of May, 2014.

The Landlord testified that he attended the rental suite on May 31, 2013 to complete a regular inspection of the suite only to discover that the Tenant had vacated the unit, leaving behind a note dated May 28, 2014 which documented the Tenant's forwarding address, along with the keys for the rental unit.

The Landlord testified that he immediately made efforts to re-rent the suite by placing advertisements seeking re-rental of the suite for June, 2014. In written evidence the Landlord provided two receipts relating to advertising costs for the first two weeks of June, 2014. The Landlord also provided a signed statement from a renter who responded to the advertisement and subsequently took up occupancy of the rental suite in July, 2014. As a result, the Landlord seeks loss of rent for June, 2014 in the amount of **\$640.00**, as well as **\$85.80** for the advertising costs.

The Tenant testified that she had not abandoned the tenancy but had provided a written note to the Landlord to end the tenancy. When the Tenant was informed of her obligations to provide the Landlord with sufficient written notice and time to end a tenancy under the Act, the Tenant explained that she had contacted the Residential

Tenancy Branch who informed her that she could vacate and leave the tenancy. The Tenant's legal advocate submitted that the advertising costs would have been costs the Landlord would have incurred in any case even if the tenancy had ended in accordance with the Act and therefore the Tenant should not have had to pay them. The Tenant's Legal Advocate also pointed out that the Landlord had failed to meet the reporting requirements of the Act and therefore the Landlord had extinguished his right to keep the Tenant's security deposit.

In relation to the remainder of the Landlord's monetary claim, the Landlord testified that the Tenant failed to clean the carpets, damaged the walls and not left the suite reasonably clean. The Landlord testified that as a result, he incurred costs to repaint two walls damaged by the Tenant and complete spot repairs to the remaining walls which he did by himself with a friend. The Landlord seeks to claim for the time and material costs, as evidenced by receipts for the damages, for a total amount of **\$304.14** (86.65 + 14.99 + 137.50 + 65.00).

The Landlord also claims for carpet cleaning in the amount of **\$47.25** as evidenced by a receipt from a professional carpet cleaning company.

The Tenant acknowledged that she did not clean the carpets at the end the tenancy. However, the Tenant disputes the Landlord's claim for damages and cleaning costs to the rental unit. The Tenant testified that the minor damage, such as the gouge to the wall and scratch marks were present at the start of the tenancy as the renovations to the unit had not been completed. The Tenant's legal advocate pointed to the lack of evidence on a CIR and the uncertainty of when the photographic evidence provided by the Landlord was taken or whether it related to the rental suite.

The Landlord submitted that he had witnesses who could testify to the damages and lack of cleaning by the Tenant and referred to the written statement of these parties who support the Landlord's claim and the condition of the rental unit at the start and end of the tenancy.

However, the Tenant's Legal advocate pointed to a statement obtained by the Tenant from the moving company who write that there were no damages to the rental unit and that it had been left clean.

The Landlord submitted that the moving company had no capacity to conduct an inspection of the rental unit.

Analysis

In relation to the Landlord's claim for unpaid rent for June, 2014, Section 45(1) requires a Tenant ending a periodic (month to month) tenancy to provide to the Landlord **written** notice of at least one full rental month. Therefore, if the Tenant wanted to end the tenancy for the end of May, 2014, the Tenant would have been required to serve the Landlord with a written notice that complied with Section 52 of the Act, no later than April 30, 2014.

However, the Tenant failed to give the Landlord written notice and sufficient time as required by the Act to end the tenancy. I do not accept the Tenant's submission that she left the tenancy because she was given permission by the Residential Tenancy Branch and I find that the Tenant failed to provide sufficient evidence that would have given her legal grounds to end the tenancy in the manner in which she did.

Policy Guideline 3 to the Act explains that damages awarded to a Landlord for loss of rent are an amount sufficient to put the Landlord in the same position as if the Tenant had not breached the agreement. As a general rule, this includes compensating the Landlord for any loss of rent up to the earliest time the Tenant could have legally ended the tenancy.

Furthermore, Policy Guideline 5 to the Act regarding the duty of a Landlord to mitigate losses for rental income states:

"In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable."

[Reproduced as written.]

Policy Guideline 17 to the Act explains that a Landlord, who has lost the right to make a claim against the security deposit for damage to the rental unit, still retains the right to

file a claim against the deposit for any monies owing for other than damage to the rental unit.

Based on the foregoing, I find that the Landlord is entitled to loss of rent in the amount of **\$640.00** for June, 2014 and the Landlord may retain the Tenant's security deposit in partial satisfaction to achieve this amount.

I also award the Landlord the advertising costs claimed which was verified by the invoices provided. I find that the Landlord had a duty under Section 7(2) of the Act to mitigate loss and is therefore entitled to seek recovery of costs associated with re renting the suite as there may have been a potential for the Landlord to re rent the suite for the middle of June, 2014 which could have minimized the costs.

I do not accept the Legal Advocate's position that the Landlord would have incurred these costs even if the Tenant had not breached the Act as the Landlord may not have needed to resort to this type of advertising had he been given sufficient notice under the Act. Therefore the Landlord is entitled to the advertising costs claimed in the amount of **\$85.80**.

The Tenant admitted to not cleaning the carpets at the end of the tenancy and as a result, I award the Landlord the carpet cleaning costs claimed, as verified by the invoices from the professional carpet cleaning company, in the amount of **\$47.25**.

In relation to the remaining costs claimed by the Landlord for damage and cleaning costs to the rental suite, I find that both parties provided convincing but conflicting evidence in relation to the alleged damages and lack of cleaning of the rental suite.

In my decision on this matter, I find that the Landlord bears the burden of proof in this case to prove the cleaning and damages to rental suite, and attempts to do so in the absence of a CIR which would have provided a preponderance of conclusive and reliable evidence to base a decision on.

Therefore, I turn my mind to the photographic evidence submitted by the Landlord. It is my finding that the photographic evidence is not sufficient to support a case that the Tenant failed to clean the rental suite and caused damage to it during the tenancy that was beyond reasonable wear and tear.

The Landlord's zoomed in photographs at best indicate marks on the wall which appear to be very faint. Furthermore, the one photograph of the fridge provided as evidence of a dirty rental unit appears to me to be clean. In the absence of more convincing

evidence, I find that the Landlord has not met the burden of proof for his claim for damages and cleaning and I dismiss this portion of his Application.

As the Landlord has been successful in the majority of his claim, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlord is **\$823.05**.

As the Landlord already holds \$320.00 in the Tenant's security deposit, 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 \$503.05.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$503.05**. 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.

The remainder of the Landlord's monetary claim for damages and cleaning of the rental suite and the costs associated with preparation and travel costs is dismissed without leave to re-apply.

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: October 06, 2014

Residential Tenancy Branch

