



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 dealt with an Application for Dispute Resolution filed by the Landlords on June 19, 2014, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlords' Agent, the Tenant, and a Law Student who was assisting the Tenant in presenting her legal arguments. As this matter involves two Landlords and because the Agent testified that she often assisted her parents in managing the tenancy, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa.

Each party gave affirmed testimony and confirmed receipt of evidence served by the Landlord. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Landlords proven entitlement to a Monetary Order.

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on January 31, 2012. The Tenant was required to pay rent of \$500.00 on the first of each month and on January 31, 2012 the Tenant paid \$250.00 as the security deposit. The Tenant vacated the rental property sometime around August 24, 2012. The parties attended dispute resolution pertaining to the Tenant's application and on June 21, 2013, a decision was issued which granted the Tenant \$743.55 in monetary compensation.

The Landlord's Agent hereinafter referred to as Agent, submitted oral testimony to support their documentary evidence which included copies of: rental receipts, black and white faxed pictures; handwritten receipts to support their claim of \$300.00 for cleaning and \$50.00 for carpet shampooing, and a corporate receipt for \$1,538.39 for new carpet; plus a statement seeking \$500.00 for loss of rent due to late notice.

The Agent argued that despite her parents residing in the upper level of the house, they did not see the Tenant move out and they were not provided notice that she would be leaving. The Agent submitted that the Tenant vacated the property leaving it dirty and with stains on the carpet that could not be removed.

The Tenant testified and said that she had provided written notice that she would be vacating and that notice was left inside the rental unit. She argued that the previous hearing dealt with the Landlords illegal entry into her suite, which she had caught on video. Even after the previous hearing, she taped the Landlords gaining illegal entry and picking up her notice to end the tenancy letter and discussing it inside her unit. When she completed her move she knocked on the Landlords' door and handed them the keys on August 24, 2012.

The Tenant and her legal assistant disputed the Landlords' claims and argued that this application was a vexatious claim brought forth simply because the Tenant had won the previous case. The Tenant provided two sworn affidavits in support of this allegation, one of them issued by the Tenant's friend who was told by the Agent that the Tenant "could accept a lesser sum of \$250, or they would claim that she damaged the suite".

The Tenant and her legal assistant argued that no condition inspection report was completed at move in; therefore, the Landlords extinguished their right to claim for damages. The Tenant stated that she had no other choice but to vacate the unit as the Landlords continued to enter the suite illegally and rummage through her personal property.

In closing, the Agent stated that she did not have any documentation to prove when the keys were actually returned to her parents. She said that her parents relied upon referrals from family friends to re-rent the unit. The Agent did not submit evidence or testimony to support the date the unit was actually re-rented.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In order to meet the burden of proof, all four criteria must be met.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Sections 24 and 36 of the Act stipulate that the right of a landlord to claim against a security deposit for damage to the rental property is extinguished if the landlord does not complete a condition inspection report form at move in or at move out, and give the tenant a copy.

To clarify, sections 24 and 36 of the Act do not prevent a landlord from seeking compensation for damages; rather, they prevent a landlord from claiming against or claiming to keep the security deposit for damage.

After careful consideration of the foregoing, documentary evidence and on a balance of probabilities I find the Landlords submitted insufficient evidence to prove the Tenant left the rental unit dirty or damaged at the end of the tenancy. I make this finding in part due to the Tenant's testimony disputing the allegations, the absence of a condition inspection report form, unclear photographs submitted in evidence, and questionable handmade receipts issued for alleged cleaning and rug cleaning. I also note that the carpet receipt was dated for March 22, 2013; seven months after this tenancy had ended, during which the Landlords or other tenants could have caused damage to the carpet. Accordingly, I dismiss the Landlords' claim for damages, without leave to reapply.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in

the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept the Agent's submission that the Tenant did not provide adequate notice to end her tenancy. That being said, I find the Landlords submitted insufficient evidence to prove they did what was reasonable to mitigate any loss of rent, if one occurred. In the absence of proof to the contrary, I accept the Tenant's submission that she moved out and returned the keys to the Landlords on August 24, 2014. There is no evidence before me to prove the Landlords took immediate action to advertise this unit on the internet or in any other location. Rather, the evidence supports that they waited to rely upon referrals from friends and family until the unit was re-rented. I note that there was no evidence to prove when the unit had been re-rented. Accordingly, I dismiss the Landlords' claim for loss of rent, without leave to reapply.

The Landlords have not succeeded with their application; therefore, I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS The Landlords' claim, without leave to reapply.

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 27, 2014

Residential Tenancy Branch

