



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF, MND

Introduction

This hearing dealt with cross applications. The landlord has filed an application for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant has filed an application seeking a monetary order and the return of the security deposit. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided an opportunity to ask questions about the hearing process.

They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing in accordance with the Rules of Procedure. I am satisfied that each party has been duly notified of each other's claim and that each party exchanged their documentary evidence in accordance with Section 89 of the Act.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence and Analysis

This was a highly contentious hearing. The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of “liar and fraud” to each other. The parties were more intent on arguing with each other than answering questions or presenting their claim. At one point I had to stop the hearing and give the landlord specific instructions. The landlords’ response was that “this is just a quasi-judicial process”. The landlord continually interrupted when the tenant was giving testimony and kept asking me “how could I let her say “fraudulent and defamatory” things about the landlord.

I explained the hearing process to the landlord, however the landlord became more agitated with me each time I attempted to explain that she would be entitled to make full submissions and argument when it was her turn; she stated “I don’t want to wait; I might forget what I want to say”.

The hearing was completed in the time allotted however at the end of the hearing the two parties once again engaged in screaming at one another. I made three attempts to advise them that the hearing was concluded and that I would be exiting the conference but neither of them acknowledged that.

Both parties provided extensive documentary evidence. All testimony and evidence have been considered in making a decision. All issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not repeat each and every item, instead it will focus directly on the claims as made in each party’s application.

The tenancy began on July 1, 2009 and ended on July 31, 2014. The tenants were obligated to pay \$1460.20 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit.

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. As I address the landlords claim, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I address the landlord's claims and my findings around each as follows.

Landlords First Claim – The landlord is seeking \$700.00 of unpaid rent for the month of July 2014. The landlord stated in June 2014 the tenant gave notice that she would be vacating by July 31, 2014. The landlord stated that the tenant withheld \$700.00 of the rent due for July without reason or authorization. The tenant stated that she moved out by July 4, 2014 and thought that was a reasonable amount to withhold for leaving early.

The tenant did not have an order from the Branch to withhold the rent or the agreement of the landlord. Based on the above and on the tenants own admission that she withheld the rent I find that the landlord is entitled to \$700.00.

Landlords Second Claim – The landlord is seeking \$300.30 for suite cleaning and \$102.37 for carpet cleaning. The landlord stated that a condition inspection report was conducted by the previous owner but has not provided it for this hearing. The landlord stated that she conducted the move out condition inspection report on August 15, 2014 and provided a copy for this hearing. The landlord stated that the tenant left the unit dirty and in a manner that was not suitable for re-rental. The landlord had the cleaning and carpet cleaning done in February 2015.

The tenant disputes this claim. The tenant stated that she left the apartment very clean and that she doesn't understand why the landlord cleaned the unit six months after she moved out. The tenant stated that she questions the validity of the receipts and the dates.

The cleaning of the unit six months after the tenancy raises more questions than it answered. The landlord did not provide an explanation as to why there was such a long gap in between move out and cleaning. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting

documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of her claim and I therefore dismiss this portion of their application.

Landlords Third Claim – The landlord is seeking \$161.21 for the replacement of the broken dryer knob and the cost to have the serviceman test the washer and dryer to ensure it was working properly. The landlord stated that the tenant damaged the dryer knob by willfully damaging it. The landlord stated that the tenant is lying when she states she was informed of any damage.

The tenant stated that she had informed the landlord near the end of her tenancy that the knob was broken. The tenant stated that she was still able to use it and that it was just through normal wear and tear that it broke.

As stated earlier in this decision, the onus is on the landlord to provide sufficient evidence to prove the damage was done as a result of the tenants misuse or negligence. After reviewing all of the documentation, hearing the testimony of both parties and on the balance of probabilities; the landlord has failed to provide sufficient evidence and I therefore dismiss this portion of the landlords' application.

Landlords Fourth Claim – The landlord is seeking \$352.53 for the replacement of balcony handle, closet door hardware, and a security box. The landlord has submitted estimates for the cost to replace these items. The landlord stated that the tenant is responsible for damaging these items. The landlord stated that the tenant has made false statements in saying that she has mentioned these items during the tenancy. The landlord stated that the tenant has committed fraud by lying about not damaging these items.

The tenant disputes these claims. The tenant stated that she had mentioned that these items were an issue during her tenancy and that the landlord is trying to make her pay for these repairs.

When a party seeks a monetary order they must provide the actual amount of loss incurred. In the landlords own testimony she stated she has yet to repair these items. In addition, without

the condition inspection report or other evidence to support her position I am unable to ascertain what if any damages is as a result of the tenant. Also, the landlord has not suffered any "out of pocket costs". Based on all of the above and on the balance of probabilities, I dismiss this portion of the landlords' application.

I will now address the tenants claim and my findings as follows:

Tenants First Claim – The tenant is seeking \$1460.20 as compensation for "loss of privacy and quiet enjoyment". The tenant stated that the relationship with the landlord began to deteriorate in February 2014. The tenant stated that most of the issues she had were with the landlords' daughter. The tenant stated that she was rude towards her and her son and that she felt her demeanour was aggressive. The tenant stated that she felt an enormous amount of stress when having to deal with a previous hearing involving the landlord and her daughter. The tenant stated that compensation equivalent of one month's rent is appropriate.

The landlord stated that she disputes this claim. The landlord stated that she empirically rejects each and every statement and that her entire testimony is "lie, lie, and more lies". The landlord stated that it is the tenant who in fact has caused her great stress by defaming her and her family and making unfounded accusations. The landlord stated that the tenants' lies have made her life a living hell.

As I have previously noted and attached to this decision in regards to a party seeking a monetary order pursuant to Section 67 of the Act, they must prove their claim. The tenant stated that she wanted to be compensated for amongst other things, having to deal with a dispute resolution hearing because the landlord issued a notice to end tenancy. The landlord has responded in accordance with the Act and in a legal fashion. The landlord exercised the legal options that were available to her. The tenant has not provided sufficient evidence to support this claim. I dismiss this portion of the tenants' application.

Both parties have applied seeking the security deposit. As for the monetary order, I find that the landlord has established a claim for \$700.00 in unpaid rent. Using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the tenant's security deposit in full satisfaction of the claim.

As neither party was completely successful in their application I decline to make a finding in regards to the filing fee and each party must bear that cost.

Conclusion

The tenants' application is dismissed in its entirety.

The landlord is entitled to retain the \$700.00 security deposit.

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: March 19, 2015

Residential Tenancy Branch

