



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2013 and ended on August 31, 2014. They further agreed that rent was set at \$1,800.00 per month and that the tenant paid a \$900.00 security deposit at the outset of the tenancy. The tenancy was set to run for a fixed term ending on August 31, 2014, after which it was to convert to a month-to-month tenancy.

The parties were in a previous dispute resolution hearing on August 8, 2014 (the "August Hearing"). The subject of that hearing was a notice to end tenancy for cause (the "Notice") which had been served on the tenant on May 30 and which the tenant disputed. At that hearing, the landlord advised that he was withdrawing the Notice and the decision rendered notes that the landlord said he would "allow the tenancy to continue".

The landlord testified that the tenant did not give him one full month's notice that he would be vacating the rental unit on August 31 and testified that he advertised the unit, but the tenant was uncooperative in allowing him to show it and he was not able to find a new tenant until December. The landlord provided a copy of a text message exchange which took place immediately after the August Hearing. In that exchange, the tenant stated "as per our agreement we will still be moving out at the end of the month/end of lease." The landlord testified that this was the first notice that he had that the tenant would be vacating the rental unit. He seeks to recover \$1,800.00 in lost rent for the month of September.

The tenant submitted into evidence a copy of his application for dispute resolution for the August Hearing and all of the paperwork which accompanied it which he claimed to have served

on the landlord. Each of the 9 pages of this package are numbered in ink at the bottom. Page 9 of the package is a letter dated June 14 in which the tenant advised that regardless of the outcome of the August Hearing, the tenant would be vacating the unit on August 31, 2014. The landlord denied having received this letter with the paperwork for the August hearing.

The landlord testified that when the tenancy began, the washing machine in the unit was new. The washing machine stopped working several times during the tenancy and on June 20, 2014, the landlord had it repaired at a cost of \$487.55 which he seeks to recover from the tenant. The landlord claimed that the serviceperson who performed the repair said that the machine was being abused by being overloaded.

The tenant agreed that the machine malfunctioned during the tenancy but stated that each time it was for identical symptoms and because the invoice submitted by the landlord states that the control board was replaced, it seemed clear to the tenant that the issue was a malfunction rather than abuse. The tenant denied having overloaded the machine.

The landlord testified that at the end of the tenancy, he had to clean the kitchen in the rental unit as it had not been adequately cleaned and he had to repair holes in the drywall from damages caused by door handles as well as a beam in the bedroom. The landlord seeks to recover \$150.00 as the value of his labour to perform these repairs.

The tenant testified that he cleaned the entire unit when he vacated and stated that while there were some holes in the walls from hanging photographs, he was unaware of other holes. He stated that at one point he had patched a hole near the front door which occurred as a result of the door knob hitting the wall as there was no door stopper but as far as he knew, there was not a new hole in that location. He acknowledged that there was damage to a beam in the bedroom, but stated that this was a result of the house settling. The landlord insisted that the house was not settling.

The landlord also seeks to recover the \$50.00 filing fee he paid to bring his application.

Analysis

I do not accept that the tenant gave the landlord written notice with the paperwork for the August Hearing. It does not make sense that the tenant would text the landlord after the August Hearing and make the statement he did without referring to his previous written notice. Rather, he would assume that the landlord knew he was vacating the unit because he had already provided written notice. I find that the landlord did not receive notice that the tenant was leaving until August 8.

Section 45 of the Act requires tenants to provide one full month's notice when they wish to end the tenancy. Section 53 provides that when a notice is given which purports to end the tenancy on a date which does not comply with section 45, the effective date of the notice is automatically changed to comply with the legislative requirement. I find that the tenant's notice given on

August 8 was automatically changed to take effect on September 30, 2014. I find that the landlord acted reasonably to re-rent but was unable to find a new tenant and I find that the tenant must be held responsible for the loss of rent for September. I award the landlord \$1,800.00.

In order to succeed in his claim for the cost of repairing the washing machine, the landlord must prove that the repair was required as a result of the tenant's misuse or abuse of the machine. The invoice does not indicate that the tenant caused the problem with the machine and the serviceperson did not appear at the hearing to offer testimony to that effect and I therefore find that the landlord has not proven that the machine malfunctioned as a result of the tenant's actions. I dismiss this claim.

In order to prove his claim for the cost of cleaning and repairs, the landlord must prove that the tenant failed to adequately clean and that the damage he repaired goes beyond what may be characterized as reasonable wear and tear. The landlord provided no photographs of the unit or the alleged damage and the tenant denied that the damage existed and claimed that he adequately cleaned the unit. Further, the landlord did not deny that there were no door stoppers in the unit and I find that if the door handles caused damage to the walls, it may be attributed to the absence of door stoppers, which are the landlord's responsibility to install, rather than to any actions of the tenant. I therefore dismiss this claim as unproven.

As the landlord has been substantially successful in his claim, I find he should recover the cost of his filing fee and I award him \$50.00 for a total entitlement of \$1,850.00. I order the landlord to retain the \$900.00 security deposit in partial satisfaction of his claim and I grant him a monetary order under section 67 for the balance of \$950.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is awarded \$950.00 and will retain the 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: April 08, 2015

Residential Tenancy Branch

