



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The original hearing was conducted via teleconference and was attended by the landlord and the female tenant. The reconvened hearing was conducted via teleconference and was attended by the landlord and both tenants.

At the outset of the original hearing the female tenant submitted that their family had been dealing with a catastrophic family illness and they needed more time to prepare for the hearing and submit responsive evidence.

Residential Tenancy Branch Rule of Procedure #6.4 outlines the criteria I must consider before granting an adjournment. The Rule lists the following considerations:

1. Whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;
2. Whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
3. The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
4. The possible prejudice to each party.

While the landlord objected to the adjournment because he wanted the issues settled sooner rather than later I was satisfied there is no prejudice to either party should the hearing be delayed by approximately 1 month.

I also found that the purpose for seeking the adjournment would contribute to the resolution of the dispute and that it provided a fair opportunity for both parties to be heard. I found there was no intentional action or neglect on the party seeking the adjournment. As such, I granted the adjournment.

As part of the reason for the adjournment was so that the tenants could provide evidence for the hearing I ordered that the tenant must serve their evidence to the landlord and the Residential Tenancy Branch no later than the end of business on April 8, 2015 and that the landlord was allowed to serve any evidence responsive to the tenants' evidence no later than April 22, 2015. Both parties submitted evidence in accordance with these orders.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to retain the security deposit held for damage to the rental unit; for cleaning; and for overholding; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The parties agreed the tenancy began on February 2013 as a month to month tenancy for a monthly rent of \$2,100.00 due on the 1st of each month with a security deposit of \$1,050.00 paid. The tenancy ended as the result of the landlord issuing a 1 Month Notice to End Tenancy for Cause and obtaining an order of possession.

The landlord submits the tenants should have vacated the rental unit on or before November 30, 2014 but that they had left a number of things behind, including garbage and furniture. The landlord submits that the tenants had not returned the keys by December 8, 2014 and so he changed the locks. The landlord seeks compensation for overholding of the rental unit for 8 days in the amount of \$250.00.

The tenants submit that they had moved all of their belongings on or before December 1, 2014 and that the only reason they had not returned their keys was because the landlord refused to communicate with them after they had moved their belongings out. They submit that they attempted to call the landlord and attended the landlord's home but he would refuse to respond.

The tenants submitted into evidence copies of text messages between the parties beginning on December 8, 2014. The tenants submit they were still trying to get the landlord to conduct a move out condition inspection.

The landlord also seeks compensation for the condition of the rental unit at the end of the tenancy, however the landlord acknowledges that he did not complete a move-in or move-out condition inspection and he did not complete an inspection report at either the start or end of the tenancy.

The landlord has submitted several photographs of the condition of the rental unit at the end of the tenancy. The landlord testified the tenants had removed two ceiling fans from rooms and blinds from the front windows. The landlord also testified the tenants

had left a substantial volume of garbage behind including furniture in the basement rental unit. The landlord seeks the following compensation:

Description	Amount
House cleaning	\$395.50
Carpet cleaning	\$440.70
Changing locks	\$125.00
2 ceiling fans	\$200.00
Blinds on the front windows	\$150.00
Dumping garbage	\$50.00
Total	\$1,361.20

The tenants submit that they had the rental unit cleaned by professional cleaners; that they had not removed the ceiling fans and/or blinds. The tenants also submit that the landlord's photograph of garbage items was more than what they agree they had left in the garage.

The tenants acknowledged leaving some garbage in the garage but they had intended to remove it when they completed the move out inspection. However since the landlord never scheduled the inspection and avoided the tenants after they left they had no ability to remove it. The tenant's also submit that the photograph provided by the landlord includes a lot more garbage, that was not theirs, than what they left behind.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

While I accept the tenant's testimony that the landlord did not schedule a move out condition inspection and that they may have been attempting to contact the landlord for several days to do so, I find that these attempts are not relevant to the requirement that the tenant return possession of the keys to the rental unit to the landlord at the end of the tenancy.

There is no specific requirement, in the *Act*, on how this is to be accomplished and as such, the tenants could have left the keys on the counter or they could have returned them to the person who answered the door at the landlord's residence on the times they were attempting to contact the landlord for the move out inspection.

In addition, Section 37 requires that all cleaning, including the removal of garbage, must be completed by the end of the tenancy and not on the date that a move out condition inspection takes place. Therefore, I find the tenants should have removed all garbage and returned the keys as soon as they had finished moving out and cleaning the rental unit and residential property.

However, as the landlord provided no evidence that he took steps to enforce the order of possession on a specific date or any attempts to recover the keys from the tenants or schedule a move out inspection where keys could have been exchanged I find the landlord failed to take steps to mitigate the loss of revenue he now claims for overholding and for changing the locks.

As to the garbage removal, I find that since the landlord did not complete a move out inspection with the tenants present and the tenants indicate it appears to be more than what they had left behind, the landlord has failed to provide sufficient evidence to corroborate his position that the garbage removal was necessary as a result of the tenants' actions.

In addition, I find that the landlord has failed to provide any evidence of the condition of the rental unit at the start of the tenancy and as such any claims that would require knowing the condition at the start of the tenancy cannot now be substantiated. As such, I find the landlord has failed to establish evidence that need for ceiling fans and blinds resulted from the tenancy.

And in relation to the landlords request for cleaning and carpet cleaning, I find that any of the photographs submitted by both parties do provide evidence to support the landlord's claim that house cleaning or carpet cleaning was required.

Section 23 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit on the day the tenant is entitled to possession of the unit or on another mutually agreed upon day. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 23(4) requires the landlord to complete a Condition Inspection Report with both the landlord and tenant signing the report. Pursuant to Section 18 of the Residential Tenancy Regulation the landlord must provide a copy of the Report to the tenant within 7 days after the inspection has been completed.

Section 24 of the *Act* states that the right of the landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not comply with the requirement to offer the tenant 2 opportunities to attend the inspection; if the landlord has provided 2 opportunities the landlord does not participate in the inspection; or complete the condition inspection report and give the tenant a copy as required under the Regulation.

Based on the landlord's own testimony, I find that the landlord failed to conduct a move in condition inspection and as such he has extinguished his right to claim against the deposit for damage to the rental unit.

In addition, as I have found the landlord has failed to establish a claim for any monetary award and that he has extinguished his right to claim against the deposit for damage to the rental unit, I find the tenants are entitled to return of the deposit in full.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety.

I grant the tenants a monetary order in the amount of **\$1,050.00** comprised of the security deposit held by the landlord.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: April 30, 2015

Residential Tenancy Branch

