



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNDC, MNSD, FF

For the landlord – MND, MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for a Monetary Order to recover the security deposit; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order to be permitted to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant, the landlord and an agent/ translator for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on September 01, 2013. Rent for this basement unit was, according to the tenant, \$700.00 per month and according to the landlord, \$800.00 per month. Rent is due on the 1st of each month. The tenant paid a security deposit of \$350.00 on August 15, 2013.

The tenant's application

The tenant testified that the landlord asked the tenant to move out and gave the tenant a handwritten notice to end tenancy which stated the landlord's mother in law wants to move into the rental unit. This Notice was only a month's notice. The tenant testified that she moved out of the rental unit on October 01, 2014 in accordance to that Notice and returned the keys on October 04, 2014. The tenant testified that the landlord should have given the tenant a proper Notice to End Tenancy and compensation of one month's rent for moving costs. The tenant seeks to recover \$200.00 for her moving expenses and \$700.00 in compensation for the Notice. The tenant testified that if the landlord's mother in law did not move into the unit the tenant also seeks to recover another \$700.00 in compensation.

The tenant testified that the landlord has not returned the tenant's security deposit. The landlord did not do a move in or move out inspection report of the rental unit with the tenant and the tenant provided a forwarding address in writing to the landlord on October 14, 2014. The tenant testified that therefore she is entitled to recover double her security deposit.

The tenant testified that she is a nurse and had to take two days off work to deal with filing her application with the Residential Tenancy Branch. The tenant testified that she earns \$22.00 an hour and seeks an undisclosed amount from the landlord for her lost earnings.

The landlord's agent testified that the landlord was not aware at the time that he had to provide a legal Two Month Notice to End Tenancy. If the tenant did not have to legally vacate the unit the tenant could have stayed in the unit. The landlord therefore disputed the tenant's claim to recover moving costs of \$200.00 and compensation of \$700.00 for the Notice.

The landlord's agent testified that the landlord's mother in law did move into the unit and the landlord disputed the tenant's claim to recover a further \$700.00. The landlord also disputed the tenant's claim to recover lost earnings.

The landlord's agent testified that the landlord disputed the tenant's claim to recover double the security deposit as the landlord was not aware that he had 15 days to file a claim to keep the security deposit.

The landlord's application

The landlord's agent testified that the tenant's rent was \$700.00; however, the tenant moved her son into the unit and agreed to pay a further \$100.00 a month from October 01, 2013. This then made the rent \$800.00 per month. The tenant continued to pay the extra rent until June, 2014 when the tenant only paid \$700.00. The tenant continued to pay \$700.00 for July and August, 2014 and in September, 2014 the tenant failed to pay any rent. The landlord seeks to recover \$300.00 for June, July and August, 2014 and \$800.00 for September, 2014. The landlord testified that the tenant did not hand back the keys until October 10, 2014.

The landlord's agent testified that the house had been fully renovated before the tenant moved in. The landlord's agent referred to the landlord's photographic evidence showing the damage to the unit after the tenant moved out. The floors were ruined, the walls were damaged, the back of the front door had nail gun holes, the trim was damaged, the blinds in the main bedroom were damaged, the cupboard under the sink was left with burn marks and a black circle from a plant pot and the fridge suffered from additional damage caused by the tenant.

The landlord's agent testified that this was a non-smoking unit and the tenant smoked inside which created nicotine smell and resulted in all the walls having to be washed down. There was a hole in the wall, the trim between the laminate floor and the tiled floor had been ripped off, a

closet door was ripped off, the doors were filthy, the landlords new toilet had been replaced by the tenant with an old one, the safety catch on the door was missing, a baseboard heater was damaged or dirty, there was damage to two other closet doors, there was damage to the wall and a beam, the towel rail in the bathroom was missing and there was some damage to some laminate floor boards in the kitchen from water.

The landlord's agent testified that they obtained a quote from a contractor to do the work to repair the damage in the unit. This quote has not been provided in documentary evidence. The landlord has provided a business card for the contractor and an amount of \$5,600.00 was been written on the reverse of the card.

The landlord seeks an Order to keep the security deposit for unpaid rent and damage.

The tenant disputed the landlord's claim regarding unpaid rent; the tenant testified that the landlord had suffered a heart attack and due to this the tenant agreed to pay an extra \$100.00 per month for hotwater and heat during the winter months. The tenant testified that in June, 2014 as they were no longer using heat the tenant said she would reduce the extra amount to \$50.00 to cover the hotwater. The tenant testified that the landlord was always aware the tenant's son was moving into the unit and did not agree to pay the extra because of this. The tenant testified that the landlord never gave the tenant a rent receipt but the tenant had a receipt book she made the landlord sign when she paid rent but this did not happen each time rent was paid. The tenant disputed that she owed rent of \$300.00 for June, July and August and testified that rent was paid for September, 2014.

The tenant testified that with regard to the landlord's claim for damage to the unit the tenant agreed that the trim between the floors was damaged along with the blinds. The tenant agreed that they did cause some damage to the walls but attempted to repair this damage. The tenant agreed that they put nail holes in the back of the front door and that a frame was damaged around a bedroom door. The tenant agreed that the towel rail came off. The tenant testified that the fridge was already damaged but the tenant may have caused some more damage inside the fridge. The tenant testified that she did smoke outside the door of the unit and smoke could have gone into the unit. The tenant agreed that she may have missed cleaning the walls and doors.

The tenant disputed that they had a plant pot under the sink and testified that she may have missed cleaning that area. The tenant disputes causing burn marks under the sink. The tenant disputed the damage to the closet door and testified that the hallway closet door was never on and the bedroom closet door was not hung properly. The tenant disputed causing a split to the third closet door. The tenant agreed they replaced the toilet as it had been leaking for a week and the landlord told the tenants to replace it. The tenant disputed causing damage to the safety catch on the door, the baseboard heater, damage to the wall and beam and the laminate floor.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim for compensation for the Notice to End Tenancy; the landlord did not serve the tenant with a legal Two Month Notice to End Tenancy under s. 49 of the *Act*. Consequently, it is deemed to have been the tenant's choice to vacate the rental unit as a hand written Notice is not valid and has no consequence under s. 49 of the *Act*. Subsequently, the tenant has no right to recover her moving costs of \$200.00 from the landlord and is not entitled to an amount equivalent to one month's rent in compensation for this invalid Notice. Furthermore, the tenant would not be entitled to compensation for a further months' rent even if the landlord's mother in law did not occupy the rental unit as a Two Month Notice to End Tenancy for Landlord's Use of the Property was not served upon the tenant. The tenant's claim for compensation is therefore dismissed without leave to reapply.

With regard to the tenant's claim for a loss of earnings for two days; the tenant has provided no evidence to show what her earnings are or that earnings were in fact lost from scheduled days of work. Furthermore; there is no provision under the *Act* for me to award the tenant a loss of earnings for time taken off work to file an application for Dispute Resolution. The tenant's claim for lost earnings is therefore dismissed without leave to reapply.

With regard to the tenant's claim to recover double the security deposit; I refer the parties to s. 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written

consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant. Based on the above and the evidence presented I find that this tenancy ended on or about the first two weeks in October, 2014; and the tenant had provided her forwarding address to the landlord in writing on October 14, 2014. As a result, the landlord had 15 days from October 14, 2014, until October 29, 2014, to return the tenant's security deposit or file an application to keep it. I find the landlord did not return the security deposit and did not file a claim to keep it until May 27, 2015. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$700.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the landlord's claim for unpaid rent; the parties agreed that the rent was \$700.00 at the start of the tenancy. The parties agreed they verbally agreed to raise the rent to \$800.00; however, the reason for doing this is in question. The tenant testified it was to cover extra utilities used during the winter months the landlord's agent testified that it was because the tenant moved her son into the unit. When both parties testimony is equally probable then the person making the claim has the burden of proof. The agreement between the parties was verbal and by their very nature verbal agreements are almost impossible for a third party to interpret. Consequently, I find the landlord has not met the burden of proof that the tenant agreed to increase the rent by \$100.00 indefinitely and the landlord's claim to recover an additional \$100.00 a month for June, July August and September is dismissed without leave to reapply.

With regard to the landlord's claim for unpaid rent for September, 2014; in this matter it is the tenant who has the burden of proof to show, by some means, that rent was paid. The tenant has proved insufficient evidence to meet the burden of proof that rent was paid for September, 2014. I therefore uphold the landlord's claim to recover unpaid rent of \$700.00.

With regard to the landlord's claim for damage to the unit, site or property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;

- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenant agreed that a number of items were damaged or left unclean at the end of the tenancy as documented above. The landlord did not do a move in or move out condition inspection report at the start or end of the tenancy but has provided photographic evidence showing the areas of the unit that were damaged or unclean; however, as the move in inspection report was not completed I have insufficient evidence to show the condition of the rental unit at the start of the tenancy to deduce what damage was caused during the tenancy. Furthermore, the landlord has not shown an itemized quote from a contractor who is going to be doing the repairs. Providing a contractor's business card with an amount written on the back does not constitute a valid quote for repairs of this extent.

As the tenant has agreed that some of the damage and cleaning is her responsibility then I will allow the landlord a nominal amount to repair the trim between the floors; to replace the blinds; to repair and paint the damage to the walls; to repair the nail holes in the back of the front door; to repair or replace the damaged bedroom door frame; to replace the towel rail; to replace some damaged areas of the fridge; to clean and paint the walls in the unit to get rid of cigarette smoke smells; to clean the doors; and to clean under the sink and repaint or replace the cupboard due to burn marks. I find therefore the landlord is entitled to a nominal amount of **\$2,500.00**.

As both parties have been partially successful with their claim I find the parties must both pay their own filing fees. As both parties have established a monetary claim in their respective applications I have offset the tenant's monetary award against that of the landlords. I therefore find the landlord may keep the security deposit of \$350.00 and the doubled portion of the security deposit of \$350.00 awarded to the tenant and I have shown below how this has been offset against the landlord's monetary award.

Loss of rent for September, 2014	\$700.00
Damages to the unit	\$2,500.00
Less tenant's monetary award for double the security deposit	(\$700.00)
Total amount due to the landlord	\$2,500.00

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 **\$2,500.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: June 25, 2015

Residential Tenancy Branch

