



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 cross applications via teleconference call. The landlord applied for a Monetary Order for damage to the rental unit and cleaning charges; and, authorization to retain the security deposit. The tenant applied for a Monetary Order for loss of personal possessions and return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

This proceeding was conducted over three dates. At the originally scheduled hearing there were technical difficulties with the telephone connection shortly after the hearing commenced and the hearing was adjourned. At the next hearing date both parties appeared. A considerable amount of hearing time was spent on determining whether all of the parties' respective evidence packages had been served upon the other party. The tenant denied receiving the landlord's evidence although the landlord insisted that it had been served with the landlord's Application for Dispute Resolution. The landlord confirmed receiving some of the tenant's evidence but not all of the same pages that had been served upon the Branch by the tenant on various dates. I proceeded to hear the matters under dispute by way of verbal testimony with the caution that I may decide to adjourn the hearing if I determined it necessary and appropriate to order service of evidence. As the hearing progressed it became apparent that it was necessary and appropriate to adjourn the proceeding and issue orders to the parties. I ordered each party to compile one complete evidence package, including page numbers, and serve the same package upon the Branch and the other party. I also informed the parties that the adjournment was not for the purpose of amending their Application and that the evidence should support the Applications they had already filed. During the adjournment I received evidence packages from both parties. On the third hearing date

I confirmed that both parties had served their newly compiled evidence packages upon each other, in full, and I have only considered those packages in making this decision.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for the amounts claimed for damage and cleaning?
2. Is the tenant entitled to compensation from the landlord for loss of her personal possessions?
3. Disposition of the security deposit.

Background and Evidence

The fixed term tenancy commenced September 1, 2013 and was set to expire August 31, 2014. The tenant paid a security deposit of \$450.00 and was required to pay rent of \$900.00 on the 1st day of every month.

The landlord pointed out that the tenant had altered the tenancy agreement that she had provided as evidence. The tenant acknowledged that she had inserted additional information on the tenancy agreement she provided as evidence that did not appear on the original tenancy agreement: her full name, including her middle name, her email address and telephone number; and, she inserted an "x" in the space that indicates electricity is included in rent. .

It was undisputed that the tenant sub-let her rental to two females for June 2014. The tenant claimed that the landlord verbally authorized her to sub-let the rental unit. The landlord denied giving the tenant authorization to sub-let. The tenant claimed that she gave the landlord a letter before she left town on May 30, 2013 so as to provide the landlord with her email address and cell phone number that she could be reached at and the contact information of the sub-tenants. The landlord denied receiving any such communication from the tenant. The tenant later testified that it was given to the landlord by way of an email but that she has been unable to access her email account for the past year to provide it as evidence as the email provider had "locked" her out of the account. The tenant did not provide any explanation as to the reason she was locked out of the email account.

The tenant's rent payment for June 2014 was dishonoured and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rent unit. The landlord testified that on June 13, 2014 he also knocked on the door of the rental unit and two young females came to the door and that is when he discovered that the tenant had

sub-let the rental unit. The landlord testified that the sub-tenants were upset that the tenant was being evicted since they had paid the tenant \$1,400.00 per month for rent plus a security deposit. The landlord testified that he could also see that the rental unit was damaged by way of a wall had been erected in an attempt to create another bedroom, and the unit smelled badly.

The tenant acknowledged that she had erected a wall to create privacy but that the landlord had told her she could use a partition or divider to create privacy when she told the landlord she was going to share her unit with a roommate. Initially, the tenant testified that the wall was not touching the floor and was merely hanging from the ceiling. When I questioned that statement further, the tenant changed her testimony to say that the wall was resting on the floor but that it was not screwed into the wood floor. The tenant explained that the bottom of the wall was supported on either side by a bed and a sofa.

It was undisputed that after the landlord posted the 10 Day Notice he and the tenant had a telephone conversation. According to the landlord the tenant verbally informed him that she would not be returning to the rental unit. The tenant denied such a statement although she acknowledged that she had left town for work training and then went to another country to attend to her son who had been in an accident and had three surgeries. The tenant claimed that she had communicated to the landlord that she would return to the rental unit via email; however, at one point in her testimony she claimed she could not use her email account. Again, the tenant explained that she was unable to retrieve her emails as she had been locked out of the account by the email provider. The tenant did state; however, that she was able to use Facebook as a means of communicating with the sub-tenants.

Both parties provided consistent testimony that the tenant appeared to have attempted to make payment of the outstanding rent to the property manager's personal name as opposed to the landlord's name even though this was not requested by the landlord or property manager; however, the first few attempts were unsuccessful. The reason the attempts were unsuccessful, as explained by the tenant was that she failed to correctly spell the property manager's name. Nevertheless, on June 23, 2014 payment of the rent for June 2014 was made electronically and received by the landlord. The landlord issued a receipt indicating the payment was being accepted for use and occupancy only and posted the receipt on the door of the rental unit. The tenant acknowledged that she had not provided the landlord with any other address to use to serve documents upon her.

The landlord was of the view that the tenancy ended pursuant to the 10 Day Notice and the tenant had communicated that she would not be returning to the property so the landlord entered into a new tenancy agreement with one of the sub-tenants to commence July 1, 2014 and end August 31, 2014.

The tenant acknowledged that the sub-tenant informed her that the landlord wanted to enter into a new tenancy with her and the tenant did not object to this. The tenant explained that she and the sub-tenants came to an arrangement that they would continue to use her possessions during their tenancy with the landlord.

The rental unit was vacated by the sub-tenant before the end of August 2014 and some of the tenant's possessions were left in the rental unit. The landlord took some of the tenant's small personal items, such as photographs, documents, a bible and a tray to storage for safe-keeping. Some other larger items, such as chairs, a bookshelf, and other furniture were still in the rental unit when the tenant appeared to come out of the rental unit on August 30, 2014.

According to the landlord, he gave the tenant her personal items that he had in storage and the tenant was at liberty to take the rest of her possessions but she told the landlord to throw them in the garbage. The landlord did not want to do that so the tenant said she would return when she could get a truck. The landlord testified that the tenant appeared to apologetic for the damage the wall created and the issues encountered by the landlord and that she agreed to pay for the damages and cleaning costs that the landlord incurred. The landlord presented her with the following document for her signature.

The document is entitled "Agreement" and indicates the tenant is giving "my consent to deduct the following charges from the security deposit held for [address of rental unit]." The security deposit is indicated as being \$450.00 and that the charges are as follows:

- Painting/wall repair \$600.00
- Drape cleaning \$200.00
- Garbage removal \$150.00
- General suite cleaning \$150.00
- Other: Floor repairs \$450.00

Beside each line item there is a tick mark in a column indicating the tenant agrees to the amount indicated. The document was signed by the tenant and the landlord's agent and is dated August 30, 2014.

The tenant testified that when she returned to the property on August 30, 2014 the landlord did give her some of her personal items although she was uncertain as to whether he had more of her possessions in storage that he did not retrieve. The tenant testified that there were other new tenants in possession of the rental unit on August 30, 2014 and they were using her chairs and curtains. The landlord responded by stating the rental unit was not occupied by new tenants on August 30, 2014.

On September 9, 2014 the tenant returned to the property with a truck and took the possessions she wanted to, which the landlord captured in photographs. The photographs depict the tenant loading furniture and artwork into a red pick-up truck. Also on September 9, 2014 the tenant gave the landlord her forwarding address in writing and requested return of the security deposit.

The landlord was of the position that the tenant had already authorized the landlord to retain the security deposit but filed this Application seeking authorization to retain it since the tenant asked for its return. By way of this Application, the landlord also seeks a Monetary Order for the balance of the amounts the tenant agreed to pay for damage and cleaning required in the rental unit by way of the agreement entered into on August 30, 2014.

The tenant testified that she was agreeable to paying for any damage and cleaning costs as she did not want confrontation with the landlord on August 30, 2014 and she signed the agreement on August 30, 2014 with the intention of paying the balance due to the landlord in time since she did not have the funds at the time. The tenant explained that upon further reflection the tenant was of the view that the agreement was unfair to her and that she wanted to contest it.

The tenant submitted that it was unfair for her to pay for suite cleaning when she left the unit clean at the end of May 2014 and it was the sub-tenants that would have caused the unit to be dirty. Further, it was unfair to pay for drapery cleaning when the drapery left in the unit was her drapery. The tenant also denied scratching the floor by installation of the wall.

The landlord responded by explaining that shortly before July 1, 2014 he cleaned the rental unit, made repairs, and removed the wall erected by the tenant as it was dangerous since the sub-tenant would not enter into a new tenancy agreement without this being done. The landlord acknowledged that the tenant's drapery was left in the rental unit by the tenant. However, cleaning costs for her draperies was less expensive than replacing the drapery that the landlord had supplied with the rental unit which were

not returned which the landlord estimate to be \$350.00 to replace. The landlord also pointed to the photographs to demonstrate that the flooring was scratched and that there were holes in the ceiling where the wall had been erected.

By way of the tenant's Application, she seeks compensation from the landlord for loss of personal property. When the tenant filed her Application she indicated she was seeking compensation of \$4,000.00. She later submitted various Monetary Order worksheets with her evidence submissions to indicate her losses were several thousand more. The tenant's evidence largely consisted of evidence to show the retail value of the replacement for the items she claims are missing.

The tenant submitted that when she sub-let the rental unit she provided a furnished unit to the sub-tenants. The tenant had authorized the sub-tenants to sell some of her personal possessions but not all of her possessions. When she returned to the property on August 30, 2014 and on September 9, 2014 she retrieved some of her possessions but several items that she had as of May 30, 2014 were missing. The tenant had testified at one point that the sub-tenants had denied taking the missing items; however, the tenant also testified that she tried locating the sub-tenants but that she was unsuccessful.

The landlord produced as evidence an email message that was given to him by the sub-tenant. It appears to be an email message from the tenant to one of the sub-tenants. It is dated July 29, 2014 and states the following:

Hi [name of sub-tenant]

Like I already said to you, please make a sale, make the money you need to recover, I am very much sure you will be able to make even more than what you are owed.

I have not intentions to not pay you, just that right now I am having financial difficulties because I am experiencing technical issues with the bank and my cheques. I have some funds I would have send you the money but I did not expect to have to pay for the surgery for my son, also all the medications are not covered under my insurance I bought. I am very sorry, if I can fix the technical issues and get through the bank security long distance I will however, you have my permission to make a sale, and recovery your money right away.

Thank you

[name of tenant]

[reproduced as written expect for names]

The tenant submitted that the above message was sent to the sub-tenant via Facebook.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Pursuant to section 34 of the Act, a tenant must not sub-let a rental unit or assign a tenancy agreement without the landlord's written consent. In this case, the tenant acknowledged that she sub-let the rental unit and did not obtain the landlord's written consent.

A tenant is responsible for fulfilling their obligations to the landlord as agreed upon by way of the tenancy agreement and as provided under the Act until such time the tenant's tenancy has ended and that includes the period of time when a unit is sub-let.

In this case, the tenant was required to pay the landlord rent of \$900.00 on the 1st day of every month. The tenant undeniably failed to meet this obligation for the month of June 2014. As such, the landlord's remedy was to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice).

It was undisputed that the landlord posted a 10 Day Notice on the door of the rental unit on June 13, 2014. The tenant acknowledged that she did not provide the landlord with a service address after she left the rental unit on May 30, 2014. Considering this, and the tenant's testimony that the sub-tenants and the landlord had communication with her regarding the 10 Day Notice, I find that posting the 10 Day Notice on the door of the rental unit was sufficient service and I deem the tenant to have received the 10 Day Notice three days after it was posted pursuant to the deemed service provisions of sections 71 and 90 of the Act. Therefore, I find the tenant was served with the 10 Day Notice on June 16, 2014 and the effective date of the Notice automatically changed to read June 26, 2014 pursuant to section 53 of the Act.

Where a tenant is served with a 10 Day Notice, the tenant has five days to pay the outstanding rent to nullify the notice and continue the tenancy or the tenant may file to dispute the 10 Day Notice within five days. If the tenant fails to do one of these things, section 46(5) provides that the tenant is conclusively presumed to have accepted the tenancy will end on the effective date of the Notice and must return vacant possession of the rental unit to the landlord. In this case, the tenant did not dispute the Notice and payment of the outstanding rent was made on June 23, 2014. I find the tenant's "attempts" to pay the rent sooner than that insufficient to meet her time limit for paying

the rent to nullify the 10 Day Notice as she attempted to send payment to the landlord's agent, in his personal name upon her own volition, and misspelled his name. Since the payment of rent arrears was made more than five days after the tenant was served with the 10 Day Notice I find the tenant's tenancy came pursuant to the 10 Day Notice.

Since the landlord accepted the payment of \$900.00 for "use and occupancy only" I am satisfied the landlord did not reinstate the tenancy and the landlord had agreed to permit the tenant occupancy until June 30, 2014.

At the end of every tenancy, a tenant is required to leave the rental unit vacant, reasonably clean, and free of damage. Although the tenant asserted that she left the unit clean when she left town on May 30, 2014 she permitted others to occupy the rental unit during the last month of her tenancy and she remained responsible for any damage or uncleanliness that was caused not only during the time she resided in the unit but the month that the sub-tenants resided in the rental unit, until June 30, 2014. Since the landlord asserted the rental unit was not reasonably clean at the end of June 2014; the tenant had freely agreed to pay for cleaning on August 30, 2014; and, the tenant could offer no evidence to demonstrate the unit was sufficiently cleaned as of June 30, 2014 I am not persuaded that the landlord's request for the tenant to pay for cleaning and the tenant's agreement to do so on August 30, 2014 was unconscionable.

The tenant was also responsible for ensuring any of the landlord's property provided for her use under the tenancy agreement, such as window coverings, were returned to the landlord at the end of tenancy. The tenant asserted that she left the landlord's drapery in a closet when she left at the end of May 2014; however, she could not provide any evidence to contradict the landlord's submission that they were not returned at the end of June 2014 or at any other time. Accordingly, I find the landlord's explanation that the tenant decided to leave her drapery in the rental unit to be reasonable. Therefore, I find the landlord's request that the tenant pay for drapery cleaning as opposed to drapery replacement, and her agreement to do so on August 30, 2014, was not unconscionable.

With respect to damage to the rental unit, I have carefully reviewed the photographs supplied as evidence. The photographs depict the remnants of the wall erected by the tenant, holes in the ceiling where the wall was attached, and scratches in the hardwood flooring where the wall was erected. Having heard the bottom of the wall were supported by a bed and sofa, both of which may move and slide, I find it very likely the floor was scratched by the wall.

Considering the tenant acknowledged during the hearing that she intended to pay the landlord the amounts requested of her on August 30, 2014 and my findings above, I find

there is no basis for me to undo that agreement and I hold the tenant responsible for paying the landlord \$1,550.00 as she agreed to do.

Since the tenant did not pay the landlord and requested the return of her security deposit, prompting the landlord to file this Application, I further award the landlord recovery of the \$50.00 filing fee the landlord paid for this Application.

In light of the above, the landlord is awarded the total sum of \$1,600.00 as requested.

With respect to the tenant's claims for compensation for missing personal property, I find the tenant failed to demonstrate the landlord is responsible for any losses, considering:

- the tenant acknowledged that she left her personal property in the care of her sub-tenants for their use;
- the tenant testified that after her tenancy ended she made an agreement with those same people to retain possession of her property during their tenancy;
- I was provided evidence by the landlord, which the tenant acknowledged to be accurate, that she authorized one of the sub-tenants to sell her possessions; and,
- the tenant did not present the sub-tenants as witnesses or other evidence from the sub-tenants that would demonstrate which possessions they sold, took with them, or left at the residential property when they vacated the property.

Of further consideration is that I found the tenant's testimony changed and was inconsistent on several occasions and many allegations were not supported by other corroborating evidence, such as emails she allegedly sent to the landlord. Nor, did she provide a reasonable explanation for her inability to retrieve her emails if in fact she had been trying to do as she stated. On the whole, I found the tenant's submissions largely unreliable and not credible.

In light of the above, I find the tenant did not demonstrate that the landlord is responsible for the tenant's missing possessions. Therefore, I dismiss the tenant's monetary claims against the landlord.

I authorize the landlord to retain the tenant's \$450.00 security deposit in partial satisfaction of the \$1,600.00 the landlord has been awarded by way of this decision and I provide the landlord with a Monetary Order for the balance of \$1,150.00 to serve upon the tenant and enforce as necessary.

Conclusion

The tenant's application has been dismissed.

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,150.00 to serve and enforce as necessary.

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: July 24, 2015

Residential Tenancy Branch

