



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlord – MND, MNSD, MNDC, FF

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 to recover double 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 damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. And the other party; however, the tenants evidence consisting of one page was not sent to the landlord prior to the hearing. The tenant confirmed receipt of the landlord's evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed that this month to month tenancy started on December 01, 2013. Rent for this unit was \$1,100.00 per month due on the 1st of each month. The tenant paid a security deposit of \$550.00 around the middle of November, 2013.

The tenant's application

The tenant testified that he sent the landlord his forwarding address by Canada Post; however, the tenant was not able to recall the date it was sent. The tenant testified it would have been around February 06, 2015 as this is the date on the letter. The tenant testified that the landlord did not return his security deposit within 20 days of receiving his forwarding address in writing and therefore the tenant seeks to recover double the security deposit to an amount of \$1,100.00 plus the filing fee of \$50.00.

The landlord testified that she did not receive a letter from the tenant with his forwarding address and the only note she had from the tenant was the small note he provided when he gave notice to end his tenancy. That note did not contain the tenant's forwarding address and the landlord only received the tenant's new address when she received his application for Dispute Resolution.

The tenant argued that he would not have filed his application to recover his security deposit if he had not sent the landlord his forwarding address.

The landlord's application

The landlord testified that the tenant caused damage to the rental unit with his furniture. There were large and small dents in the wall and the entire wall had to be filled, sanded and repainted. Some of the dents were an inch deep and this required the contractor to come over back three times to fill the holes and then sand and paint. The unit was also not left clean and after the repair work to the holes was completed the landlord had to clean the unit. The landlord referred to the letter from the contractor who carried out this work in which he has described the level of work he did and the damage to the walls.

The landlord testified that she paid the contractor \$550.00 to do the repair. The landlord agreed she had not provided an invoice from the contractor in documentary evidence but called the contractor as a witness. The witness joined the hearing and gave testimony concerning the repair work he did on the wall of the unit. The witness testified that he had to fill the dents twice and then sand and repaint the wall using two coats of paint. The witness does not recall if he provided an invoice to the landlord or the actual amount the landlord paid as this occurred some months ago.

The landlord testified that due to the damage to the wall the landlord was unable to rent the unit for November 01, 2014. The landlord testified that she had placed an advertisement for the unit on October 01, 2014 after she had received written notice from the tenant to end the tenancy. Another advertisement was placed on November, 01, 2014 after the landlord realized that there was damage that required repair. This advert advised that the unit would be available from December 01, 2014 as the landlord did not know how long the repairs would take. The landlord testified that the contractor started work around November 05 or 06 and finished the work on November 17, 2014. The unit was rented for December 01, 2014.

The landlord testified that she then had to clean the unit due to the mess from the repair work and consequently lost a month's rent for November. The landlord testified that she had increased the rent for the unit to \$1,250.00 in her advertisement and therefore seeks to recover this amount from the tenant.

The landlord seeks an Order to be permitted to keep the security deposit to \$550.00 to offset against her monetary claim and seeks to recover the filing fee of \$50.00.

The tenant disputed the landlord's claim the tenant testified that the day he moved into the unit he used an excellent mover. The tenant's couch and love seat would not pass into the area around the turn in the kitchen to the living room due to the way the entrance had been constructed. The damage to the walls occurred at this time. The tenant and movers had to take down some kitchen cabinets in order to get the couch and love seat in and the same problem happened at the end of the tenancy when the tenant tried to remove his couch and love seat from the living room. The tenant does not feel he should be held responsible for the cost of this

repair as it is the difficult configuration of the unit which made the damage to the walls unpreventable.

For the same reason the tenant disputed the landlord's claim to recover a loss of rent for November, 2014. The tenant testified that the landlord could have rented the unit and then done the work after the new tenants had moved in. the tenant disputed that the unit was left unclean and testified he had a cleaner come in to clean while he lived there. Some cleaning may have been required due to any mess from moving out but the landlord's son would not allow the tenant to return to the unit to do the cleaning.

The landlord testified that her new tenants did not have any trouble moving their furniture into the unit and the unit has been rented many times over the last 15 years and no other tenants have encountered any difficulty getting their furniture in or out of the unit. If the tenant's furniture was too bulky then this is out of the landlord's control.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the tenant's claim to recover double the security deposit; I refer the tenant to s. 38(1) of the *Act* which states:

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The parties have provided contradictory evidence regarding the tenant's forwarding address; the tenant testified that this was sent to the landlord by mail on or about February 06, 2015. The landlord testified that she did not receive the tenant's forwarding address until she received his application for Dispute Resolution. When one party's evidence contradicts that of the other then the burden of proof falls to the person making the claim. In this case the tenant must provide corroborating evidence to show that his forwarding address was sent to the landlord in February, 2015. In the absence of any corroborating evidence, it is one person's word against that of the other and the burden of proof is not met. Consequently, the tenant has not shown his forwarding address was sent to the landlord and therefore the tenant's claim to recover double the security deposit is premature. I will however deal with the security deposit under the landlord's application.

With regard to the landlord's application for damage to the unit, site or property; the tenant does not dispute that the damage to the walls occurred at the start of his tenancy while the tenant was bringing his furniture into the unit. I refer the parties to s. 32(3) of the *Act* which says that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I am satisfied from the undisputed evidence before me that the tenant did cause the damage to the walls and although the tenant feels he should not be held responsible for this damage the fact remains it was caused as he attempted to get his furniture into the living room. While this may not be a negligent act it was certainly caused by the tenant or his movers; however, the landlord is required to show the actual cost to have this damage repaired. The landlord's witness testified that he could not remember how much he charged the landlord to repair the wall and the landlord has provided insufficient corroborating evidence to show the actual costs incurred. I must therefore limit the landlord's claim to a nominal amount of \$400.00.

With regard to the landlord's claim for a loss of rent for November, 2014 due to the damage and the time it took to correct the damage and then clean the unit. I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the

tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation. I find the length of time it took to affect the repairs to the walls and then clean the unit does not reflect a timely manner as this repair was only required to one wall. Furthermore, I find the landlord increased the rent for this unit by \$150.00 per month. The landlord could have left her advertisement running in October and potential re-rented the unit half way through November had the repair work been completed in a more timely manner and the landlord may have been able to rent the unit faster if she had not increased the rent by \$150.00. I am not satisfied that this type of work needed to take most of November to complete and find the landlord did not mitigate the loss by trying to re-rent the unit at an amount greater than the tenant's rent. Consequently, I limit the landlord's claim to half a month's rent for November of \$550.00 as repairs were required.

I Order the landlord to keep the security deposit of \$550.00 pursuant to s. 38(4)(b) of the *Act*.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Damage to the walls	\$400.00
Loss of rent	\$550.00
Filing fee	\$50.00
Less security deposit	(-\$550.00)
Total amount due to the landlord	\$450.00

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$450.00**. 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: August 27, 2015

Residential Tenancy Branch

