



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LANDLORD: MND, MNR, MNSD, MNDC, FF
TENANT: MNDC

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for unpaid rent or utilities, for damage to the unit, site or property, for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for compensation for damage or loss under the Act, regulations or tenancy agreement.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on September 9, 2015, in accordance with section 89 of the Act. The Tenant said she did not receive the Landlord's hearing package but she said she wanted to go ahead with the hearing at the present time. The Tenant did not give a forwarding address to the Landlord so the Landlord sent the hearing package to the Tenant's last known address and the Tenant did not request Canada Post to forward her mail. I deem the Tenant was served according to the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery by the Tenant's agent on April 28, 2015, in accordance to section 89 of the Act.

The Landlord confirmed he receive the Tenant's hearing package.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is there unpaid rent or utilities and if so how much?
4. Is the Landlord entitled to compensation for unpaid rent and if so how much?
5. Is there loss or damage and is the Landlord entitled to compensations?
6. Is the Landlord entitled to retain the Tenant's deposits?

Tenant:

1. Is there a loss or damage to the Tenant and if so is the Tenant entitled to compensation?

Background and Evidence

This tenancy started on September 1, 2010 as a month to month tenancy. Rent was \$850.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 on September 1, 2010. The Landlord and Tenant both agreed that there was no move in or move out condition inspection reports completed.

The Tenant said she had mentioned to the Landlord on a number of occasions that there was moisture leaking into the rental unit. The Tenant said she noticed it in January, February and March, 2015. The Tenant said the Landlord did send a repairman to the unit but nothing was fixed. On April 13, 2015 the Tenant said there was a flood in the rental unit and she believed it was because of a leak in the hot water tank. The Tenant said the water was in all the room but the kitchen. The Tenant said there was 2 inches of standing water. The Tenant said she called the Landlord to fix the problem and because the Tenant believed the unit was uninhabitable because of the water she moved to a motel for four days while repairs were completed. The Tenant did not consult with the Landlord about the alternative accommodation prior to leaving the rental unit.

The Tenant said she made this application to recover her costs during the time she had to move out of the rental unit. The Tenant said the motel bill is \$682.20 and the Tenant is claiming \$60.00 for gas and food and an additional \$60.00 for carpets cleaning which she had done 3 days prior to the flood.

The Landlord said there was no flood at the rental unit and the Landlord submitted two signed witness letters from repair men that state there was no flood at the rental unit. Both letters say that they found wet spots on the carpet that was caused by dog urine.

The Landlord said they did not find the cause of the wet spots but he suspects it was caused by dog urine, or possible spillage while the Tenant's partner was mopping the floor. The Landlord said when he went to the property there were no signs of water leaking from the hot water tank or the pipes. The Landlord continued to say he did replace the hot water tank as it was older and this was a good time to replace it. The Landlord said he put in a high efficiency tank to save the Tenant utility costs. The Landlord continued to say the Tenant had no reason to move out as the rental unit was livable while the hot water tank was being replaced. As well the Landlord said the Tenant did not talk to him about it or get his agreement on the temporary living accommodation. The Landlord said he does not agree with the Tenant's claims.

Further the Landlord said the Tenant moved out of the rental unit on April 28, 2015 without any notice and so he is making a claim for loss rental income for May, 2015 of \$850.00. The Landlord said the Tenant moved out April 28, 2015 without telling him she was moving. As well the Landlord said the Tenant has \$411.00 in unpaid rent. The Landlord submitted a hand written note with his calculation of the unpaid rent from 2012 on it. The Tenant said she has paid all but \$105.00 of the unpaid rent.

The Landlord continued to say the Tenant left the unit in a terrible state and he had to renovate the rental unit to make it available to rent again. The Landlord said because of the 5 dogs the Tenant had in the unit the carpets and flooring was ruined by dog urine. The Landlord owns a construction company that did the work and the invoice from the company was \$9,468.23. This bill involved removing the flooring, sealing the subfloor, replacing carpet, washing walls and removing wall paper, painting the unit and disposing of the waste materials. The Landlord was asked how old the unit was and if it had been renovated. The Landlord said the unit was built in 1993 and the carpet was the original carpeting. The Landlord said he did not know when or if the unit had been painted. The Landlord was asked if he had pro-rated the renovation cost or if he had charged the full amount to the Tenant who had lived there for the last 5 years. The Landlord said he is claiming the full renovation costs from the Tenant.

Further the Landlord said his company owned the rental unit at the start of the Tenant's tenancy but he only took over management in 2011 so he did not know if a move in condition inspection was completed. The Tenant said no move in condition inspection was completed and the Landlord does not repair things when things break. The Landlord said they have a full time maintenance crew and things are repaired in a timely manner.

The Landlord said he is requesting \$10,729.23 in damages and unpaid rent from the Tenant. As well the Landlord requested to recover the filing fee from the Tenant of \$100.00.

The Tenant provided a Witness C.G. the Tenant's daughter and the witness said she spent 3 days April 15, 16 and 17 for approximately 3 hours a day vacuuming up water in the rental unit. The Witness said she saw approximately 1 inch of water standing on the bare floor in the rental unit. The Landlord said he had repair men in the unit on those

days and their signed witness letters say there was no standing water or flooding in the unit.

The Landlord said in closing that he does repairs in a timely manner and he believes he is responsive to his tenants' requests. The Landlord believes the moisture problem is from the dogs and possibly the spilling of water while mopping the floors.

The Tenant said in closing that the Landlord does not do repairs and people move into the units as is and if they want improvement they have to do the improvements themselves. The Tenant said she has rented in many places with her dogs and she and her dogs are good tenants and her dogs do not urinate in the rental unit.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a periodic at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$850.00 for the month of May, 2015.

With regard to the unpaid rent of \$411.00 the Landlord has not provided a rental ledger or receipts to proof the amount of unpaid rent. The Tenant did agree that of the \$411.00 she had \$105.00 still outstanding as unpaid rent; therefore as the amount of \$411.00 is not proven but the amount of \$105.00 is agreed to by the Tenant; I award the Landlord \$105.00 of unpaid rent.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord said he is unable to establish the condition of the rental unit at the start of the tenancy and there is no move out inspection report completed by the Landlord and the Tenant at the end of the tenancy, I find that the Landlord has not established

grounds to show the amount if any damage the Tenant caused to the rental unit. In addition the parties agreed the rental unit was old and most likely the unit was past the economic life of the carpets, flooring and painting. Consequently, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

With regard to the Tenant's claim for the costs of alternative accommodations while the rental unit was worked on. The Landlord provided signed witness statements that there was little to no flooding and the Tenant provided witness testimony that said there was flooding. The witness statements are contradictory. As there are no photographs of the rental unit during the time period in question the condition of the unit is not clear. A Claimant is responsible to meet the burden of proving a claim and when it is just the one party's word against the other party's word that burden of proof is not met. As well in order to claim alternative accommodation some discussion between the Landlord and Tenant is required. A party cannot act unilaterally in pursuing alternative accommodation unless the other party is unavailable. The Tenant did not consult the Landlord prior to moving to the motel; therefore the Landlord had no opportunity to provide alternative accommodation to the Tenant if it was needed. Consequently I dismiss the Tenant's application without leave to reapply.

As the Landlord was only partially successful in this matter I order the Landlord to bear the cost of the \$100.00 filing fee for his application, which he has already paid. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Loss Rental income for May, 2015	\$ 850.00	
	Unpaid rent	\$ 105.00	
	Total		\$ 955.00
Less:	Security Deposit	\$ 425.00	
	Total		\$ 425.00
	Balance owing		\$ 525.00

Conclusion

The Tenant's application is dismissed without leave to reapply.

A monetary order has been issued to the Landlord for \$525.00.

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: September 30, 2015

Residential Tenancy Branch

