



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receiving the tenant's notice of hearing package and the tenant confirmed receiving the landlord's notice of hearing package. On the basis of this evidence, I am satisfied that both parties were duly served with the dispute resolution packages pursuant to sections 89 of the *Act*.

Preliminary Issue

The landlord confirmed receipt of the tenant's documentary evidence package. The landlord stated that his documentary evidence package that was submitted to the Residential Tenancy Branch (the Branch) on August 27, 2015 was not provided to the tenant. The tenant confirmed that she did not receive any documentary evidence from the landlord. I also note for the record that the landlord's documentary evidence was submitted late to the Branch and received from the landlord 3 days prior to the scheduled hearing date as opposed to 14 days as per Rule 3.14 of the Rules of Procedure,

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

I note that both parties had applied for dispute on March 20, 2015 and April 2, 2015. A review shows that all documents were created in 2013. The landlord did not provide any details of why the documentary evidence was not submitted on time during the approximately 5 month period before the hearing date.

Rule 3.17 of the Rules of Procedure states,

3.17 Consideration of new and relevant evidence.

Evidence not provided to the other party and the Residential Tenancy Branch in accordance with Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the Arbitrator that it is new and relevant evidence and that it was not available at the time that their application was filed or when they served and submitted their evidence.

The Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

Although the landlord submitted his documentary evidence late and failed to provide copies to the tenant, I accept this evidence as the value outweighs any possible prejudice to the tenant. During the hearing, the landlord notified the tenant of the contents of the submitted material and had no objections. I find that the landlord's documentary evidence is not new, but is relevant in assisting in reaching a fair and equitable decision of this dispute between both parties. As such after reviewing Rule 3.14 and considering the evidence under Rule 3.17, I accept the landlord's documentary evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or part of the security deposit?

Is the landlord entitled to recover his filing fee from the tenant?

Is the tenant entitled to a monetary order for the return of double the security deposit?

Is the tenant entitled to recovery of his filing fee from the landlord?

Background and Evidence

Both parties agreed that this tenancy began on September 30, 2013, after signing a tenancy agreement dated September 28, 2013 for a 1 year fixed term ending on September 30, 2014 and then thereafter on a month-to-month basis. The monthly rent at the end of the tenancy was \$1,200.00, payable on the 1st day of each month. A security deposit of \$600.00 was paid. Both parties agreed that the tenancy ended on February 14, 2015. Both parties agreed that the landlord received ½ months rent of \$600.00 for February 2015 from the tenant.

The landlord submitted a copy of a monetary worksheet for the monetary claim totalling, \$1,964.25, which consists of 1 ½ months rent totalling, \$1,800.00 {\$600.00 (February) + \$1,200.00(March)}, \$89.25 for carpet cleaning and \$75.00 for general cleaning costs. The landlord stated that the tenant failed to provide proper notice to end the tenancy, but did receive a text message on February 1, 2015 notifying him of the tenant's intent to vacate the rental unit on February 14, 2015. The landlord stated that he immediately began advertising the availability of the rental unit but was unable to re-rent the premises until April 1, 2015. The landlord stated that the tenant left the rental unit dirty, requiring general cleaning costs of \$75.00 and \$89.25 for carpet cleaning costs. The landlord has provided copies of handwritten receipts dated February 21, 2015 for general cleaning from E. Cleaning for \$75.00 and \$89.25. The landlord stated that the tenant was the first occupant in a brand new condo as the landlord took possession of the rental unit on September 24, 2013 and the tenant occupied the rental unit on September 30, 2013.

The tenant disputed the landlord's claim that notice to vacate was not properly given, but was unable to provide any evidence to support this claim. The tenant's direct testimony raised no objection to the landlord's claims for compensation for carpet cleaning and general cleaning costs. The tenant argued that a verbal mutual

agreement was reached with the landlord to end the tenancy and to provide the landlord with compensation. The landlord disputed this claim stating that no mutual agreement was made. The tenant was unable to provide any evidence other than her affirmed testimony to support her claim of a mutual agreement.

The tenant seeks a monetary order for the return of double the security deposit (\$600.00) of \$1,200.00 and recovery of the filing fee (\$50.00) as the landlord has failed to return the deposit within 15 days after the end of the tenancy and did not make an application to dispute the return of the deposit to offset any claims. The tenant stated that she provided her forwarding address to the landlord at the end of the tenancy on February 14, 2015, which the landlord wrote down. The landlord disputes this stating that no forwarding address in writing was received from the tenant. The tenant was not able to provide any evidence to support this claim.

Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Section 45 of the Residential Tenancy Act (the Act) states,

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement....

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

On the basis of the evidence provided by both parties it is clear that the tenant failed to provide proper written notice to end her tenancy as per section 45 of the Act. The tenant provided her notice to vacate on February 1, 2015 via text and not in writing.

Even if I were to accept that the tenant's text message of February 1, 2015 were a valid notice to end tenancy, which I do not, the earliest legal effective date the tenant could have ended her tenancy in accordance with section 45 of the *Act* was March 31, 2015. The landlord gave undisputed affirmed testimony that he made immediate attempts to advertise the unit for rent, but was unsuccessful until April 1, 2015. As such, I find that the landlord has established a claim for recovery of lost rental income of \$1,800.00 for ½ of February (\$600.00) and all of March 2015 (\$1,200.00).

I find that the landlord has established a claim for the \$75.00 in general cleaning costs and the \$89.25 in carpet cleaning as the tenant has conceded in her direct testimony during the hearing that the carpets and the rental unit required cleaning.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing. I find on a balance of probabilities that the tenant has failed to provide her forwarding address in writing to the landlord as per section 38 of the *Act*. The tenant's claim that she provided her forwarding address in writing to the landlord is disputed and she is unable to provide any supporting evidence. As such, I find that the doubling provisions of section 38 of the *Act* do not apply. For these reasons, I dismiss the tenant's application in its entirety.

As for the monetary order, I find that the landlord has established a claim for \$1,964.25 in unpaid rent, lost rental income, carpet cleaning and general cleaning costs. The landlord is also entitled to recovery of the \$50.00 filing fee. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$600.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,414.25. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, damage arising out of this tenancy and his filing fee, and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent ½ February 2015	\$600.00
Lost Rental Income March 2015	1,200.00

General Cleaning	75.00
Carpet Cleaning	89.25
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,414.25

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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

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 08, 2015

Residential Tenancy Branch

