



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cornerstone Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPR, MND, MNR, MNSD
Tenant: MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders. The landlord also sought an order of possession.

The hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant.

At the outset of the hearing I confirmed with the landlord that the tenant no longer has possession of the rental and she does not require an order of possession. I amend the landlord's Application for Dispute Resolution to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for cleaning of the rental unit and for all or part of the security deposit, pursuant to Sections 37, 38, 57, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for the return of rent; for moving costs; and for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on January 22, 2015 for a 1 year fixed term tenancy beginning on March 1, 2015 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid. The parties agree the tenant moved into the rental unit on February 27, 2015.

The parties disputed when the tenant vacated the rental unit. The tenant submits that she vacated the unit on May 1, 2015 as per their mutual agreement to end the tenancy. The landlord submits that the tenant had not vacated the rental unit until May 4, 2015.

In support of her position the tenant provided invoices for her move that indicate the tenant's belongings had been moved out of the rental unit on May 1, 2015 by professional movers. The landlord stated in her written submission that she had posted a "right of entry unit on suite door to perform the move out inspection on May 4th and the tenant was heard in the unit, but would

not answer the door.” [reproduced as written]. In her oral testimony the landlord also stated there were still boxes on the patio on May 4, 2015.

The landlord submitted a copy of a “Right of Entry” notice dated April 28, 2015 stating the landlord would enter the rental unit on May 4, 2015 at 10:00 a.m. to complete the move-out condition inspection report. The landlord also submitted into evidence a copy of a Notice of Final Opportunity to Schedule a Condition Inspection that proposes a move out condition inspection to be scheduled for May 5, 2015 at 10:00 a.m. and a copy of a Condition Inspection Report signed by the landlord on May 5, 2015 indicating that the tenant did not attend the scheduled inspection.

The landlord seeks rent in the amount of \$1,200.00 for rent for the month of May 2015 citing that the tenant had failed to vacate the rental unit on May 1, 2015 as per the mutual agreement to end tenancy.

The landlord confirmed that she received the tenant's forwarding address and keys when she entered the rental unit on May 5, 2015.

The tenant submits that when she moved into the rental unit the landlord had failed to clean the unit sufficiently as had been promised. Specifically the tenant indicated that the flooring (both carpets and hard-surfaces) had not been cleaned. The tenant provided photographic evidence of the condition of the rental unit. The tenant submits that these photographs were taken March 6 and 7 2015. The landlord testified that they had cleaned the flooring prior to the tenant moving into the unit.

The landlord further testified that even though the flooring had been cleaned that she called their carpet cleaning contractor during the move in inspection and arranged for them to come and re-do the floors. The landlord submits that when the cleaner arrived to complete the cleaning the tenant refused him entry.

The tenant submits that when the cleaner arrived it was too dark and neither the living room nor the bedroom had overhead lighting so he could not complete the cleaning. She also stated that because her boxes were in throughout the rental unit the cleaner was not prepared to move items by himself. She states the cleaner never returned and the unit was never cleaned despite repeated requests.

The tenant submits that she neither attempted the cleaning herself nor did she hire anyone to complete the cleaning. She stated that on March 9, 2015 she underwent surgery and could not return to the rental unit because the nurse who was to visit her daily for dressing changes because the rental unit was unsanitary. The tenant submits that after this she never lived in the rental unit. She states she had stayed with friends for some of the time and then re-rented a room from a previous landlord.

The tenant also submits that the landlord harassed her in regard to her storage locker. She states that she put things in the storage locker assigned to her and the landlord sent her an email telling her that she had to remove the items or they would be removed.

The landlord submitted a copy of a Mutual Agreement to End a Tenancy signed by the tenant on March 31, 2015 with an effective end date of May 1, 2015. The Agreement is not signed by

the landlord, although the landlord confirms they accepted the mutual agreement for the tenant to vacate the rental unit on May 1, 2015.

The tenant seeks return of her security deposit (\$600.00); return of rent for the month of March 2015 (\$1,200.00) and moving costs (\$580.00) and the cost of a USB stick (\$8.00), for a total claim of \$2,388.00 plus her filing fee of \$50.00.

The landlord submits that the tenant's rent for the month of April 2015 was returned as insufficient funds. The tenant testified that it was not returned due to insufficient funds but rather because she put a stop payment on the cheque.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on April 9, 2015 with an effective vacancy date of April 24, 2015 due to \$1,200.00 in unpaid rent. There is no evidence before me that the tenant filed an Application for Dispute Resolution seeking to cancel this Notice.

The landlord seeks \$1,200.00 for rent for the month of April 2015 and \$25.00 for an NSF fee. Clause 10 of the tenancy agreement stipulates that late payments, returned or non-sufficient funds cheques are subject to an administrative fee of \$25.00.

Based on the Condition Inspection Report completed by the landlord on May 5, 2015 the landlord seeks \$300.00 for cleaning of the rental unit. The landlord did not provide confirmation of any costs associated with cleaning such as an invoice, receipt, or breakdown of staff hours.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 26(1) of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Such rights include having an order from an Arbitrator; collecting from a landlord an overpayment of a security deposit; an additional rent increase that did not comply with the *Act* or payment of emergency repairs when the landlord has failed to make such repairs.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

Despite the tenant's photographic evidence, I find the tenant has failed to establish that the flooring or any other part of the rental unit was so unclean or in a state of disrepair that it was

not suitable for her to move into the unit. Specifically, I find the tenant has failed to provide any evidence to substantiate that the landlord provided a rental unit that was not suitable for occupation.

Even if she had been able to establish it was not suitable for occupation I find the tenant took no steps to mitigate any losses that may have resulted from such a condition, such as cleaning the floors herself or hiring someone to do so; seeking to end the tenancy for a breach of a material term of the tenancy agreement; or seeking an order from the Residential Tenancy Branch requiring the landlord to complete any cleaning and/or repairs.

From the evidence submitted by both parties I also find there is no evidence that the tenant had authority under the *Act* to withhold any amount of rent until the tenancy ended. As such, I find the tenant is not entitled to return of rent for the month of March 2015 and I dismiss this portion of the tenant's Application. I also find the landlord is entitled to the payment of rent for the month of April 2015.

I also find that the landlord is entitled to the \$25.00 charge as per clause 10 of the tenancy agreement that stipulates returned cheques warrant late payment fee regardless of whether the cheque was returned for insufficient funds or any other reason.

As I have found above that the tenant has failed to submit sufficient evidence that the landlord failed to comply with their obligations under Section 32 of the *Act*, I further find that the tenant has failed to provide any justification for compensation for her decision to move out of the rental unit.

Even if the tenant had provided such evidence, I find that the tenancy did not end as a result of either the alleged failure of the landlord to comply with Section 32 or the mutual agreement to end the tenancy. Rather the tenancy ended as the result of the tenant's failure to pay rent for the month of April 2015 and the landlord's subsequent issuance of a 10 Day Notice to End Tenancy for Unpaid Rent.

Therefore, I find the tenancy ended as a result of the tenant's actions and she is not entitled to compensation for any moving costs and the USB stick. I dismiss this portion of the tenant's claim.

In relation to the landlord's claim for rent for the month of May 2015, I accept that on April 28, 2015 the landlord provided the tenant with a notice of entry for May 4, 2015. I also note that, from the landlord's testimony and submissions she expected the tenancy would end on May 1, 2015 and that the inspection was to be conducted on May 4, 2015. As I have also found that the tenancy ended on April 24, 2015 I find the landlord should have been expecting the rental unit to be vacated by that date and should have been attempting to confirm its vacancy as of April 24, 2015.

As such, it is not clear to me why the landlord did not attempt to confirm on May 1, 2, or 3, 2015 whether or not the tenant had vacated the rental unit. Further, as the landlord had provided a notice of their intent to enter the rental unit on May 4, 2015 it is not clear to me why she would not then have entered the unit, on that date, as she would have had authority to do so by way of the notice of entry.

As a result I find the landlord failed to show due diligence in the determination as to whether or not the tenant had vacated the rental unit in compliance with either the 10 Day Notice to End Tenancy or the Mutual Agreement to End Tenancy. I also find the landlord had authority on May 4, 2015 to enter the rental unit to determine if the tenant had vacated or not.

And finally, I find that the landlord has presented no evidence that they took any steps to mitigate any possible losses of revenue from any overholding of the rental unit. For these reasons, I dismiss the landlord's claim for lost revenue for the month of May 2015.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

While I accept the landlord's Condition Inspection Report records the condition of the rental unit at the end of the tenancy, I find the landlord has failed to provide any evidence as to the extent of the cleaning required. That is to say, there is no photographic evidence that could clearly show such extent and there is no evidence of what cleaning was required that justified the \$300.00 claim.

As such, I find the landlord has failed to provide sufficient evidence to establish the value of the loss suffered as a result of the tenant's failure to comply with her obligations under Section 37 of the *Act*. I therefore dismiss this portion of the landlord's claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As per the landlord's testimony I find the landlord received the tenant's forwarding address on May 5, 2015. As such, I find the landlord had until May 20, 2015 to either return the deposit in full or file their Application for Dispute Resolution claiming against the deposit.

I note the landlord filed their Application for Dispute Resolution seeking, in part, to retain the security deposit on August 19, 2015. As such, I find the landlord failed to comply with their obligations under Section 38(1) of the *Act* and the tenant is entitled to double the amount of the security deposit pursuant to Section 38(6).

As both parties were at least partially successful I find they both entitled to recover their respective filing fees of \$50.00 each.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,275.00** comprised of \$1,200.00 April 2015 rent owed; \$25.00 returned rent cheque fee and the \$50.00 fee paid by the landlord for this application.

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,250.00** comprised of \$1,200.00 double the security deposit and the \$50.00 fee paid by the tenant for this application.

As such, I grant a monetary order in the amount of **\$25.00** to the landlord. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 11, 2015

Residential Tenancy Branch

