



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF (Landlord's Application)
 MNSD (Tenant's Application)

Introduction

This hearing took place in response to an Application for Dispute Resolution (the "Application") made by the Landlord on May 7, 2015 and by the Tenant on May 14, 2015.

The Landlord applied for a Monetary Order for: unpaid rent and utilities; damage to the rental unit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security and pet damage deposits; and, to recover the filing fee. The Tenant applied for double the return of her security and pet damage deposits.

The Tenant, the Landlord and the Landlord's agent appeared for the hearing and provided affirmed testimony. The Landlord also called two witnesses during the hearing both of whom provided affirmed testimony.

The Tenant confirmed receipt of the Landlord's Application as well as the Landlord's documentary and photographic evidence. The Tenant also confirmed that she had not provided any evidence prior to this hearing and was only relying on her oral evidence in this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. The Tenant was also allowed to cross examine the Landlord's witnesses during the hearing.

I have carefully considered the evidence provided by the parties in this case. However, I have only documented that evidence which I relied upon to make findings in this Decision.

Preliminary Issue

The Landlord had filed her Application for a monetary claim against the Tenant in the amount of \$1,400.00. The Application requires the Applicant to provide a detailed calculation of the monetary claim, which the Landlord provided in the form of a Monetary Order Worksheet which discloses a claim amount of \$6,055.00 which was served to the Tenant with the Application.

The Landlord explained that she was claiming for damages to the rental unit as well as loss under the Act which related to a breach of a prior agreement made by the parties. This agreement took place in a hearing on April 21, 2015 with a different Arbitrator (the file number for which appears on the front page of this Decision). The Landlord explained that the failure of the Tenant to move out of the rental unit in accordance with the Act now results in the losses she seeks to recover from the Tenant.

The Tenant confirmed receipt of the Application including the Monetary Order Worksheet sheet which detailed the breakdown of the Landlord's monetary claim of \$6,055.00. This amount included a pet damage and security deposit requested to be paid by the Tenant as opposed to be deducted by the Landlord. Therefore, this resulted in the Landlord's claim of \$4,655.35. The Tenant responded to this claim accordingly during the hearing. As the Tenant had been put on sufficient notice of the Landlord's monetary claim, which included a portion that was subject to a previous hearing which the Tenant had knowledge of, I amended the Landlord's monetary claim to \$4,655.35 pursuant to my authority under Section 64(3) of the Act.

Issues to be Decided

- Did the Tenant fail to vacate the rental unit in accordance with the Act?
- Is the Landlord entitled to the costs associated with the Tenant failing to move out of the rental unit and in accordance with a previous settlement agreement?
- Who is entitled to the security and pet damage deposits?

Background and Evidence

Both parties agreed that this verbal tenancy started on September 1, 2014 on a month to month basis. Rent for the unit was established at \$1,400.00 per month payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$700.00 and a pet damage deposit of \$500.00 (the "Deposits") at the start of the tenancy. Both parties confirmed that the Landlord still retains \$1,200.00 in the Tenant's Deposits.

The Landlord confirmed that she had completed a move in Condition Inspection Report (the "CIR") at the start of the tenancy and a move out CIR at the end of the tenancy. However, the Landlord acknowledged that this was not completed with or in the presence of the Tenant. The Tenant testified that she provided the Landlord with her forwarding address by text message in March 2015 as well as writing it on a piece of paper at the end of the tenancy which she handed to the Landlord. The Landlord confirmed receipt of the Tenant's forwarding address by text message.

The Landlord was asked to first present her Application for loss under the Act. The Landlord explained that the previous hearing of April 21, 2015 heard an Application by the Landlord for an Order of Possession and a Monetary Order of Unpaid rent, and an Application by the Tenant to cancel a notice for unpaid rent and for the Landlord's use of the property.

The Landlord testified that in that hearing she agreed to forgo two months of unpaid rent so that the Tenant would leave on April 30, 2015 at 1:00 p.m. The Landlord testified that she had sold the rental property and that the new owners were moving in the following day. Therefore she needed vacant possession of the rental unit by 1:00 p.m. so that she could have plenty of time and opportunity to make it ready for the new owners.

The Landlord testified that in a further attempt to ensure the Tenant would have the rental unit vacant at 1:00 p.m. she agreed to give the Tenant an additional amount of \$500.00 to help in the cleaning of the rental unit and removal of the Tenant's belongings. The Landlord's agent pointed me to the previous decision which details the conditions that were agreed to by the parties during the previous hearing as follows:

1. *the parties agreed to end the tenancy on April 30, 2015 at 1:00 p.m.*
2. *the Landlord agreed to forgive the unpaid rent for March, 2015 of \$1,400.00 and the unpaid rent for April, 2015 of \$1,400.00 if the Tenant is completely moved out of the rental unit by 1:00 p.m. on April 30, 2015.*
3. *further the Landlord agreed to pay the Tenant \$500.00 in compensation if the Tenant is completely moved out of the rental unit by 1:00 p.m. on April 30, 2015.*
4. *the Landlord also agreed to return the Tenants security deposit in the amount of \$700.00 and the Tenant's pet deposit in the amount of \$700.00 if the Tenant is completely moved out of the rental unit by 1:00 p.m. on April 30, 2015 and the unit is clean. If there is a dispute about the security and pet deposit the parties will comply with the Act in how the deposits are handled.*
5. *If the Tenant is completely moved out by 1:00 p.m. on April 30, 2015 and the move out condition inspection is completed to both parties satisfaction the Landlord will complete the payment of the security and pet deposits*

(\$1,400.00) and the compensation of \$500.00 to the Tenant at the move out condition inspection meeting.

- 6. the Landlord will receive an Order of Possession with and effective vacancy date of April 30, 2015 at 1:00 p.m.*
- 7. this settlement agreement is full settlement of all disputes arising from this tenancy with the exception of any applications to do with the Tenant's security and pet deposits.*

[Reproduced as written]

Through questions put to her by her agent, the Landlord testified that she attended the rental unit with her husband, two staff members and a cleaning crew shortly after 1:00 p.m. The Landlord testified that the Tenant was still in the process of moving out as there were numerous personal items and property at the rental unit. In addition, the Landlord observed the rental unit had not been cleaned and there were damages. The Landlord testified that there were items on the deck, in the house, and in the garage.

The Landlord testified that she questioned the Tenant as to why she had not complied with the agreement made in the April 21, 2015 hearing and the Tenant replied to her that she needed more time. The Landlord informed the Tenant that she had been given time from April 21, 2015 to fully vacate the rental unit and the Landlord had already given her \$500.00 to assist her in meeting the agreed deadline. The Landlord's agent explained that unfortunately the \$500.00 compensation was given to the Tenant prematurely in error by the Landlord. The Landlord testified that the Tenant asked her what she should do and the Landlord asked the Tenant to leave the premises as she had to get the rental unit cleaned and repaired before the new owners were to take possession of it the next day. The Landlord testified that the Tenant collected some of her personal property from the rental unit and left shortly after 2:00 p.m.

The Landlord called a witness and through questioning by the Landlord's agent, the witness testified that he was with the Landlord at 1:00 p.m. on April 30, 2015 when they attended the rental unit. The witness testified that the Tenant was still there trying to move out and that the rental unit was filthy. The witness testified that the Tenant left around 2:00 p.m. and he saw that there was a lot of garbage left behind by her including tires, boxes behind the shed, garbage bags and dog feces on the lawn. The witness testified that it took them until late in the evening to clear the mess left by the Tenant, repair the damages, and clean the rental unit. The witness provided a signed statement into evidence to verify his testimony.

The Tenant cross examined the witness and asked where he had seen the personal property left behind and whether this was on the rental property or on the boulevard,

which was city property. The witness replied stating that the Tenant's personal property was left on both the rental property and by the boulevard.

The Landlord's husband was called next to testify as a witness. The Landlord's husband confirmed the Landlord's testimony that they had visited the rental unit at 1:00 p.m. and the Tenant had not fully vacated it and that the rental unit was in a mess. The Landlord's husband testified that this caused them a lot of stress and anxiety as he knew they had a lot of work to do to get the place ready for the new owners.

The Tenant cross examined the Landlord's husband and submitted that the Landlord's husband was yelling and threatening her and her son's life and telling them to get out. The Tenant stated that she had video evidence of this. However, this was not provided into evidence for this hearing. The Tenant submitted that the Landlord's husband had stood in her way and prevented her from leaving and as a result she had called the police. The Tenant asked the Landlord's husband whether he had prevented them from leaving the rental unit. The Landlord's husband responded by disputing this.

The Landlord stated that as the Tenant had failed to comply with the terms of the settlement agreement she now seeks the two months of unpaid rent in the amount of \$2,800.00 and the \$500.00 in compensation which she proactively paid to the Tenant.

The Tenant responded to the Landlord's evidence and stated that the unpaid rent issue was dealt with in the previous hearing and that of the free month's rent the Landlord gave to her related to compensation payable to her under the notice to end tenancy for Landlord's use of the property. The Tenant acknowledged that she was not out of the rental unit by 1:00 p.m. but this was because the Landlord had prevented her from leaving at that time. The Tenant testified that the Landlord and her party were verbally abusive towards her and that she froze and did not know what to do, so she did leave eventually because the Landlord wanted her gone. The Tenant also pointed to a photograph taken by the Landlord which she states shows the Landlord's husband standing in front of her which was preventing her from leaving.

In rebuttal the Landlord's agent pointed out that the Tenant had provided no video evidence or police reports that she talked of in her testimony into evidence and denied any allegation that the Tenant was prevented from leaving the rental unit. The Landlord's agent also pointed to the statement provided by a member of the cleaning team which supported the fact that the Tenant had not fully moved out by 1:00 p.m. The Landlord was asked to present their Application for damages to the rental unit. The Landlord's agent explained that the Tenant's pets had urinated on the carpets during the tenancy and the Tenant had failed to clean them at the end of the tenancy. The

Landlord provided an invoice in the amount of \$103.95 from a professional cleaning company for this amount which was paid on April 30, 2015.

The Landlord's agent stated that the laminate flooring in the rental unit, which was approximately seven years old but in immaculate condition, had been damaged by the Tenant. The Landlord's agent pointed to photographic evidence which indicated the damage. The Landlord's agent also stated that the Tenant's pets had caused numerous scratches in the bedrooms of the rental unit which had to be painted.

The Landlord's agent explained that the Tenant failed to hook up her dryer to the external venting in the linen closet. As a result, this caused mold growth in the closet where the dryer was located which had to be cleaned by a professional cleaning company. The Landlord's agent explained that the Tenant's pets had defecated in the yard and had damaged the grass area. The Landlord's agent pointed to a photograph showing the damage to the lawn area. The Landlord provided an invoice in the amount of \$737.00 which details the remediation work carried out for the above damages.

The Landlord's agent explained that the Tenant had put four holes in the front door and that excessive water on the tile countertop had caused the countertop tiles to crack and lift up. The Landlord provided photographic evidence to support this and an invoice in the amount of \$100.00 for the remediation work.

The Landlord testified that the rental unit was so filthy that the cleaning company they had employed charged them \$374.50. An invoice was provided into evidence which details the exact cleaning that was carried out such as: cleaning of the kitchen appliances, windows, light fixtures, walls, floors, and bathrooms.

The Landlord also provided two receipts for a total amount of \$39.90 which related to two dump runs to the city landfill in order to dispose of the personal items left behind by the Tenant. The Landlord provided photographic evidence of the Landlord's staff removing the Tenant's personal property and indicating items that had been left behind by the Tenant. The Landlord testified that she did leave some items belonging to the Tenant outside by the boulevard for the Tenant to collect. The Landlord testified that she informed the Tenant that she should come back and collect them, but the Tenant failed to collect them.

The Tenant replied by testifying that there was no damage caused by her pets as they were restricted to one area of the house. In response to the holes in the front door, the Tenant explained that she had changed the lock on the front door because the Landlord had failed to collect all the keys from the previous renter and this led to the rental unit

being broken into and some of her property stolen. The Tenant submitted that the holes in the door were not negligent damage.

The Tenant testified that she had the carpets cleaned. The Tenant submitted that the Landlord's claim for cleaning and general maintenance of the rental unit should be dismissed as the Landlord had already lined up the cleaning staff to clean the rental unit for the new owners.

The Tenant disputed that fact that all the items shown in the photographs belonged to her and submitted that some of the property belonged to the Landlord and was present at the start of the tenancy including an old mattress and miscellaneous items on the deck, front porch and inside the house. However, the Tenant did acknowledge that a dog crate and two tires shown in the photographs did belong to her.

The Tenant testified that she never had a dryer that worked and that she had asked a mould inspector to visit the rental unit who informed her that this was mold emanating from the crawl space and not from a dryer.

In relation to the tile damage, the Tenant explained that the Landlord had used cement instead of grout in-between the tiles which had caused the tiles to crack. The Tenant acknowledged that the tiles were cracked but denied they had come away as shown in the Landlord's photographs.

In closing arguments, the Landlord's agent pointed out that the Tenant had no evidence to back her testimony and that it all resulted in theory. The Landlord also pointed to a witness statement from the cleaning company staff member who verified that the rental unit was provided to the Tenant fairly clean and that the unit was so disgusting at the end of the tenancy that it took until midnight to clean it. At the end of the hearing, the Tenant provided her forwarding address in writing which was amended on the Tenant's Application and confirmed with the Landlord.

Analysis

In relation to the Tenant's Application for the return of double the amount of her Deposits, I find the Landlord was served with the Tenant's forwarding address prior to the tenancy ending. The parties confirmed that the tenancy had ended on April 30, 2015 pursuant to the settlement agreement. Therefore, the Landlord had until May 15, 2015 to comply Section 38(1) of the Act to make the Application to keep the Tenant's security deposit. The Landlord made the Application on May 7, 2015 to keep the Tenant's security deposit for a number of reasons, including unpaid rent and other losses under

the Act. Therefore, I find the doubling request of the Tenant is not applicable in this case. The Tenant was informed of this during the hearing.

I first turn my mind to the Landlord's Application for losses arising from the settlement agreement made by the parties on April 21, 2015. I accept the evidence before me that the parties entered into this agreement with the specific understanding that the Tenant would be vacating the rental unit on April 30, 2015 at 1:00 p.m. I find that this was clearly set out in the terms of the settlement agreement. In relation to the two months' rent the Landlord forgave the Tenant, I find that this was based on the understanding that the Tenant would give back vacant possession of the rental unit to the Landlord.

Section 37(1) of the Act requires a Tenant to vacate the rental unit at 1 p.m. on the day the tenancy ends. I find that there is clear evidence before me that the Tenant failed to vacate the rental unit and was in breach of the Act and the settlement agreement in failing to return the rental unit vacant to the Landlord at 1:00 p.m. I find that the Tenant's evidence that she was prevented from leaving the rental unit by the Landlord's husband is not believable. This is because the Tenant testified that she was told to leave the rental unit by the Landlord and then at another point she was prevented from leaving. It is clear that the Landlord wanted the Tenant gone at 1:00 pm from the rental unit as this was the point of the settlement agreement made between the parties. Therefore, I find it hard to understand why the Landlord would have prevented the Tenant from leaving the rental unit, especially as the Landlord was eager to get the rental unit ready for the new owners the next day.

Furthermore, I find the Tenant's submission that a photograph showing the Landlord's husband standing in front of the Tenant is not sufficient evidence for me to conclude that the Tenant was prevented from leaving the rental unit at 1:00 p.m. Rather, I find the evidence suggests that the Tenant was nowhere near ready to hand over vacant possession of the rental unit at 1:00 pm as she was still in the process of moving her personal property.

I accept the evidence of the Landlord that the Tenant had failed to clean the rental unit and leave it undamaged (as explained further below). Therefore, this meant that the Tenant was not able to meet the terms of the settlement agreement.

However, I must turn my mind to the consequences of the Tenant not moving out of the rental unit at 1:00 p.m. The evidence suggests that the Tenant left the rental unit at 2:00 p.m. which is one hour later than she was supposed to. Notwithstanding this breach of the agreement and of the Act by the Tenant, I find that there was little consequence to the Landlord for the one hour delay because inevitably the end result was that the Landlord did get possession of the rental unit. Furthermore, I do not have sufficient

information before me to determine whether the Tenant's compensation under the notice to end tenancy for Landlord' use of the property was included in this amount as testified to by the Tenant. Therefore, I decline to order that the unpaid rent forgiven by the Landlord in the previous settlement agreement be paid to the Landlord.

However, I find the situation pertaining to the Landlord's \$500.00 compensation very different. Even though the Landlord should not have paid this compensation to the Tenant until after the tenancy had ended, I find that this amount was contingent on the Landlord's satisfaction that the Tenant had fully vacated the rental unit and left it clean and undamaged. However, the evidence shows that this was not the case. Therefore, I find the Landlord would not have been obligated to pay this compensation. As the Landlord did proactively pay the Tenant \$500.00, I order this amount be returned back to the Landlord.

In respect to the Landlord's Application for damages to the rental unit, I make the following findings. A party that makes an Application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in Sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean, and undamaged except for reasonable wear and tear at the end of a tenancy. Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary. However, the Act states that the landlord and tenant must inspect the rental unit together.

In this case, I find the Landlord failed to complete the move-in and move-out CIR with the Tenant in accordance with the Act. Therefore, I find that I am unable to consider the CIR provided by the Landlord as evidence in this case. As a result, I turn my mind to the remaining evidence presented by the parties during the hearing. In this respect, I take into consideration that the Landlord provided photographic evidence, witness statements, invoices to verify the amounts being claimed, and provided two witnesses

for the hearing which were subject to cross examination by the Tenant. This is in stark contrast to the Tenant's evidence which was based on oral testimony only.

Policy Guideline 1 to the Act details the responsibility of both the landlord and tenant for residential premises. In relation to carpets, the guideline explains that a tenant is expected to steam clean or shampoo the carpets at the end of the tenancy if they have had pets. The guideline also explains that a tenant is responsible for cleaning the windows, walls, and major appliances at the end of a tenancy.

In respect to the carpet cleaning and cleaning of the rental unit, I find that the Landlord's evidence is sufficient to prove that the Tenant had failed to clean the rental unit at the end of the tenancy. The Tenant failed to provide any supporting evidence to support her testimony that she had cleaned the carpets. Furthermore, I do not accept the Tenant's submission that the Landlord was intending in any case to have the rental unit cleaned for the new owners. This is because irrespective of what the Landlord's intention was after the Tenant was to vacate the property, the Tenant still had an obligation to clean the rental unit at the end of the tenancy in accordance with the Act.

In respect to the mold removal in the linen closet, I do not accept the Tenant's oral evidence that the mold was emanating from a different part of the house. This is because the Tenant claimed to have had an inspection conducted by a mold expert but no supporting evidence of a report was provided.

In relation to the holes in the front door, I find the Tenants assertion that she was broken into during the tenancy being the reason why she changed the locks, is again not backed up with supporting evidence such as a police report. I find that as the Tenant changed the locks of her own volition, without consulting with the Landlord, then she would be responsible for repairing any resulting damage caused to the door.

I also find it very unlikely that the Tenant only left behind two tires and a dog crate as she testified. The Landlord's oral testimony that the Tenant left behind property which had to be subsequently removed and damages that had to be remedied is supported by the Landlord's photographic evidence and is consistent with the witness evidence provided. I also find that the invoice evidence provides sufficient detail of the remediation work performed at the end of the tenancy. I find that this is consistent with the Landlord's evidence.

In conclusion, I find the Landlord's preponderance of evidence is far more convincing and compelling than the oral evidence of the Tenant. Therefore, I grant the Landlord's monetary claim for damages to the rental unit for a total amount of \$1,355.35 (\$737.00

+ \$100.00 + \$374.50 + \$103.95 + \$29.90 + \$10.00). In addition to the amount of \$500.00, this results in a total claim in favour of the Landlord for \$1,855.35.

As the Landlord has been the only successful party in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,905.35.

As the Landlord already holds the Tenant's \$1,200.00 Deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$705.35. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment.

Conclusion

For the reasons set out above, I hereby allow the Landlord to keep the Tenant's Deposits and grant a Monetary Order in the amount of \$705.35 in favor of the Landlord. The Tenant's Application is dismissed without leave to re-apply.

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: October 19, 2015

Residential Tenancy Branch

