



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNSD, FF
Tenant: MNDC, O, RP, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders. The tenant also sought to have repairs completed.

The hearing was conducted via teleconference and was attended by the landlord, the tenant and his worker.

At the outset of the hearing the parties confirmed the tenant vacated the rental unit. The tenant submitted he moved out of the rental unit on September 12, 2015. The landlord submitted the tenant vacated the unit on September 15, 2015.

As the tenant no longer has possession of the rental unit I find the portion of his Application for Dispute Resolution seeking an order to have the landlord complete repairs is moot. As such, I amend the tenant's Application to exclude the matter of repairs.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for a compensation; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on January 27, 2015 for a 6 month tenancy beginning on February 1, 2015 for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid.

The tenancy agreement also required the tenant to vacate the rental unit at the end of the fixed term on or before August 1, 2015. The parties agreed the tenant did not vacate the rental unit until mid-September 2015, as noted above.

The landlord's original claim sought a monetary order for unpaid rent for the months of August and September 2015. Both parties confirmed that on September 21, 2015 the tenant provided payment of \$900.00 rent for the month of August 2015. Both parties also confirmed the tenant did not provide the landlord with a payment of rent for any portion of the month of September 2015. During the hearing the landlord amended her claim to be reduced to \$900.00.

The tenant seeks compensation, in the amount of \$10,000.00 for the following reasons:

The tenant submitted, in his documentary evidence, that he had tripped on the flooring in his rental unit and received a black eye as a result. He stated that he had asked the landlord to repair the flooring since the start of the tenancy but the landlord had failed to do so. The landlord submitted, in her documentary evidence, that the tenant had not raised the issue of any problems with the flooring until a day or two before he fell.

The tenant submitted in his verbal testimony, that during the tenancy the landlord "walked all over me". He stated that they had harassed him and attended the property without proper notice.

The landlord submitted that the tenancy progressed well, until the tenant was advised that the landlord did not intend to enter into a new tenancy agreement when the current agreement expired. She stated that anytime she or her agents attempted to attend the property the tenant would call the police. She said it got so bad that they eventually would call police before they went to have police escort them to the unit.

The tenant submitted that during the first four months of the tenancy he had difficulty receiving. He stated he complained to the landlord that he was not getting his mail and that the landlord put up a mailbox. The tenant submitted that the landlord later took down the mailbox.

The landlord testified that there had been a mailbox but that it was constantly being found removed and all over the property. She stated they eventually had to install it with extended screws to stop it from being removed.

The tenant also testified that when the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent she had put cat feces on his deck. When asked, the tenant stated he could not actually confirm it was the landlord who put the cat feces on the deck but it was there the same day that the landlord posted the Notice.

The tenant testified that during the tenancy the upstairs flooded and when he went to talk to the upstairs occupants they called him a derogatory name. The tenant, in his

written, submission also indicated that there was a mould problem in the bathroom. The landlord, in her written submission, stated that the mould had resulted from a previous flood but that all drywall had been removed and all moisture removed.

The tenant further testified that the landlord did not have a smoke alarm installed. The landlord testified there had been a smoke alarm hardwired into the ceiling prior to the start of the tenancy. The tenant testified it was not there and he would be physically unable to remove it.

Analysis

Section 26 of the *Act* states that 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 the right under this *Act* to deduct all or a portion of the rent.

As the tenant failed to move out of the rental unit in accordance with the tenancy agreement and the tenant was living in the rental unit on September 1, 2015, the day in the month that rent was due, according to the tenancy agreement, I find the tenant should have paid the landlord rent for the month of September 2015.

I find the tenant choosing to move out of the rental unit sometime before the end of September, 2015 is not authorization under the *Act* for the tenant to deduct any amount of rent owed to the landlord on September 1, 2015.

As a result, I find the tenant is responsible for the payment of rent to the landlord in the amount of \$900.00.

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.

When both parties provide equally plausible, but differing, testimony recounting events during the tenancy, the party with the burden of proof must provide additional evidence to corroborate their claim.

From the testimony of both parties, I find the landlord has provided verbal testimony disputing the tenant's version of events. In addition, I find the tenant has failed to provide any additional evidence that can corroborate his version of events.

As a result, I find the tenant has failed to establish that the landlord had violated the *Act*, regulation or tenancy agreement or that he had suffered a loss as a result of any such violation.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

Further, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$950.00** comprised of \$900.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$450.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$500.00**. 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: October 09, 2015

Residential Tenancy Branch

