



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MND MNDC FF
For the tenants: MNDC MNSD

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlord applied for a monetary order for damages to the unit, site or property, for money owing or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenants applied for the return of double their security deposit under the *Act*, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenants, a tenant advocate, the landlord, and an agent for the landlord (the “agent”) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenants confirmed that they received documentary evidence from the landlord and had the opportunity to review the landlord’s evidence prior to the hearing. The landlord and agent testified that they were not aware of the tenants’ cross-application as they had not been served with it. The tenants confirmed that they were not aware of the landlord’s new mailing address and that their package was served by regular mail and not registered mail. While I find the tenants to have been served in accordance with the *Act*, I will deal with the tenants’ application below in my preliminary matters portion of this Decision.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, and by consent of the parties, the landlord's application was amended in accordance with section 64(3) of the *Act* to reflect the correct surname of tenant J.S.

As the landlord and agent testified that they were unaware of the tenants' cross application, I am not satisfied that the landlord was served with the tenants' application in accordance with the *Act*. Both parties have the right to a fair hearing. The landlord would not be aware of the tenants' application without having received the tenants' Application. I note, however, that during the hearing, the landlord's new mailing address for service was provided which has been included on the front page of this Decision for ease of reference for the parties. Based on the above, **I dismiss** the tenants' application **with leave to reapply** due to insufficient evidence of service on the landlord. I note that by dismissing the tenants' application with leave to reapply does not extend any applicable time limits under the *Act*.

At the outset of the hearing, the agent claimed that the landlord served the Residential Tenancy Branch with photos in support of their application. The agent and landlord were advised that no photos were located in their dispute resolution file, and that the only documents referred to in the information system as being submitted were two pages of evidence, which according to the dispute resolution physical file was one flooring invoice dated May 12, 2015 on one page, and one transfer station receipt on the second page dated May 18, 2015. The agent requested an adjournment to provide the opportunity to submit photos in support of their application which was denied after considering the adjournment criteria as set out in the Rules of Procedure, and the fact that the tenants had attended the hearing and were ready to proceed.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that there was no written tenancy agreement. The parties disputed the start date of the verbal tenancy, with the landlord alleging that it began on February 1, 2012, and the tenants stating that it began in 2010, but were unsure of the month and day in 2010. The parties did agree that monthly rent was \$600 per month and was due on the first day of each month.

The parties also disputed the amount of the security deposit, with the landlord claiming the tenants only paid \$150, and the tenants claiming they paid \$300. As the landlord has not claimed towards the tenants' security deposit and the tenants' claim for the return of their security deposit has been dismissed with leave to reapply, I make no findings on the amount of the security deposit.

The landlord's monetary claim of \$1,865 is comprised of the following:

ITEM DESCRIPTION	AMOUNT
Item 1. Carpet repair	\$600
Item 2. Loss of rent for April and May of 2015	\$1,200
Item 3. Garbage and furniture removal	\$65.00
TOTAL	\$1,865

Regarding item #1, the agent confirmed that the landlord failed to complete an incoming condition inspection report at the start of the tenancy. The tenants did not agree with any portion of the landlord's claim. There were no photos submitted to support the condition of the carpets at the start of the tenancy. There were also no photos submitted to support the condition of the carpets at the end of the tenancy. The agent claimed that an outgoing condition inspection report was completed at the end of the tenancy, without the tenants, and confirmed that the outgoing condition inspection report was not submitted in evidence. The agent referred to a receipt in the amount of \$600 submitted in evidence.

Regarding item #2, the agent stated that the landlord was claiming for loss of April 2015 rent of \$600 and May 2015 rent of \$600 due to the tenants' failing to provide proper one month notice to end the month to month tenancy. The tenants testified that they served their written one month notice on the son of the landlord, J. M. on February 26, 2015. The tenants stated that their written one month notice indicated that they would be vacating the rental unit effective April 1, 2015. The agent denied that any written notice was served on his brother, J.M. When the agent was asked for J.M. to provide testimony regarding the one month notice, he replied that J.M. was not available and did

not have a cell phone, so could not be reached during the hearing. The agent testified that his father was away in India for a month around the time the tenants allege they gave their written notice to vacate the rental unit. The agent did not provide any testimony regarding whether any other person was assigned as an agent while his father was away in India.

The tenants stated that for the month of April 2015, the landlord cashed a cheque from the Ministry for half of the monthly rent in the amount of \$300. The agent confirmed that was true during the hearing. The agent did not provide any documentary evidence or testimony regarding the landlord's attempts to re-rent the rental unit in April or May of 2015.

Regarding item #3, the agent referred to a receipt in the amount of \$65 submitted in evidence. There was no condition inspection report or other documentary evidence to support this portion of the landlord's claim.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and their claim fails. In the matter before me, the landlord has the onus of proof in providing sufficient evidence in support of his claim for \$1,865.

Item 1 – The agent confirmed that the landlord failed to complete an incoming condition inspection report at the start of the tenancy. Furthermore, the tenants did not agree with any portion of the landlord's claim. In addition, the landlord confirmed that he did not have a written tenancy agreement with the tenant. Section 13 of the *Act* states:

Requirements for tenancy agreements

13 (1) A landlord must prepare **in writing** every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(a) the standard terms;

- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

[my emphasis added]

In addition, section 12 of the *Residential Tenancy Act Regulation* (the “*Regulation*”) states:

Disclosure and form of agreement

12 (1) A landlord must ensure that a tenancy agreement is

(a) in writing,

(b) signed and dated by both the landlord and the tenant,

(c) in type no smaller than 8 point, and

(d) written so as to be easily read and understood by a reasonable person.

- (2) A landlord must ensure that the terms of a tenancy agreement required under section 13 [*requirements for a tenancy agreement*] of the Act and section 13 [*standard terms*] of this regulation are set out in the tenancy agreement in a manner that makes them clearly distinguishable from terms that are not required under those sections.

[my emphasis added]

Based on the above, I find the landlord breached section 13 of the *Act* and section 12 of the *Regulation* by failing to complete a tenancy agreement in writing as required. I **caution** the landlord to comply with section 13 of the *Act*, and section 12 of the *Regulation* in the future. In addition to the above, section 23 of the *Act* requires that a landlord must complete a condition inspection report at the start of the tenancy. In the matter before me, the agent confirmed that the landlord failed to complete an incoming condition inspection report at the start of the tenancy. As a result, I **caution** the landlord to comply with section 23 of the *Act* in the future.

In the matter before me, without an incoming condition inspection report being completed, and given that an outgoing condition inspection report was confirmed as not having been submitted in evidence, I find the landlord has failed to meet the burden of proof to support his claim for \$600 for carpet cleaning. Therefore, I **dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 2 - The agent stated that the landlord was claiming for loss of April 2015 rent of \$600 and May 2015 rent of \$600 due to the tenants' failing to provide proper one month notice to end the month to month tenancy. During the hearing; however, the agent admitted that in fact the landlord cashed a cheque from the Ministry in the amount of \$300 for rent for April 2015. As a result, I do not find the landlord or agent to be credible. The fact that the landlord had already cashed a cheque in the amount of \$300, yet has applied for the full amount of rent in the amount of \$600 for April 2015 negatively impacts the landlord's credibility. As a result, and taking into account that the tenants' testimony remained consistent during the hearing, and the taking into account that the landlord provided no evidence that he had assigned an agent while he was away in

India, I prefer the evidence of the tenants that they provided their written forwarding address to the landlord on February 26, 2015, which was served upon J.G., the landlord's son. I also note that the landlord provided no evidence to support that any attempts to re-rent the rental unit have been made.

As the parties agree that the tenants did not vacate until April 1, 2015, I find that the tenants only owe the daily amount of rent for April 1, 2015 as the tenants were overholding the rental unit after March 31, 2015 for one day. As monthly rent was \$600 per month, I find that the daily amount of rent was **\$19.73** (calculated at \$600 X 12 months in one year, and divided by 365 days in one year). As a result, I find the tenants only owe \$19.73 for April 1, 2015. **I dismiss** the remainder of this portion of the landlord's claim due to insufficient evidence, without leave to reapply. Given that the landlord has already cashed a cheque in the amount of \$300 that was paid by the Ministry on behalf of the tenant towards April 2015 partial rent, **I ORDER** the landlord to immediately return all but \$19.73 of that amount, for a total amount to be returned to the tenants in the amount of **\$280.27**.

Item 3 – While the agent referred to a receipt in the amount of \$65 submitted in evidence, there was no condition inspection report or other documentary evidence to support this portion of the landlord's claim. Therefore, I find the landlord has failed to meet the burden of proof and **I dismiss** this portion of the landlord's claim in full due to insufficient evidence, without leave to reapply.

As most of the landlord's claim did not have merit, **I do not grant** the landlord the recovery of their filing fee.

As described above, **I ORDER** the landlord to immediately return **\$280.27** to the tenants as the landlord cashed a cheque from the Ministry without authority to do so under the *Act*.

I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$280.27**. If the landlord does not immediately return this amount to the tenants, this order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Most of the landlord's application is dismissed. The landlord is only authorized to retain \$19.73 of the April 2015 \$300 partial rent cheque already cashed by the landlord in full satisfaction of the tenants overholding for April 1, 2015.

The landlord has been ordered to immediately return the balance of April 2015 rent of \$280.27 to the tenants. The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$280.27. If the landlord does not immediately return this amount to the tenants, this order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord has been cautioned to comply with sections 13 and 23 of the *Act*, and section 12 of the Regulation in the future.

The tenants' application is dismissed with leave to reapply due to a service issue.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: November 3, 2015

Residential Tenancy Branch

