



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF
 MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord.

The landlord attended the hearing, gave affirmed testimony and called 1 witness who gave affirmed testimony. The tenant also attended, accompanied by a Legal Advocate, and the tenant called 2 witnesses. The tenant and the tenant's witnesses also gave affirmed testimony, and the parties provided evidentiary material in advance of the hearing. The parties were given the opportunity to question each other and the witnesses with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of evidence were raised.

At the outset of the hearing, I found that, although both parties have applied under the *Manufactured Home Park Tenancy Act*, the rental unit is a manufactured home owned by the landlord. I amend both applications to show that the applications are made under the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 17, 2013 and the tenant moved out without notice sometime in October, 2015. Rent in the amount of \$850.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a manufactured home owned by the landlord in a manufactured home park also owned by the landlord, and a copy of the tenancy agreement has been provided.

The landlord also testified that the rent for October, 2015 wasn't paid. The landlord went to the rental unit and noticed items were missing from the rental unit or property and it appeared that the tenant had moved out. The landlord called the tenant on October 22, 2015 and the tenant advised that she had in fact moved out and she would return the key. The key was returned that day, and the landlord told the tenant to view the move-out condition of the rental unit, but the tenant said she didn't have time. The landlord did not receive any previous notice that the tenant would be moving out and the landlord claims unpaid rent for the month of October, 2015.

The landlord was not able to re-rent the manufactured home until December 1, 2015 due to the damages and cleaning required at the end of this tenancy. A bedroom door was broken, a closet door had a hole in it, and nail holes were left in walls. The landlord does not claim the damages, but claims loss of rental revenue for the month of November, 2015. Copies of rental receipts and a receipt for the security deposit have been provided.

The landlord also testified that she has not received the tenant's forwarding address in writing, and that the first the landlord knew of it was when she was served with the Tenant's Application for Dispute Resolution.

The landlord's witness testified that he does repair work on rental units for the landlord. He made some repairs to the rental unit, and testified that repairs and doors and cleaning took a couple of days, but the witness does not keep track and doesn't recall when.

The tenant testified that she signed a tenancy agreement, but didn't receive a copy of it from the landlord until September 14, 2015.

The rental unit had holes in the walls at move-in, and doors were damaged. The tenant has provided photographs and testified that they were taken on September 30, 2015 which was the final day of the tenancy.

The tenant and her daughter told the landlord verbally on September 9, 2015 that they were moving out, and on September 14, 2015 the tenant gave the landlord written notice. The landlord threw the notice back at the tenant while the tenant was in the car. The tenant went to police with a complaint and has provided a police file number. On September 16, 2015 the tenant went back to the landlord's residence and attached a copy of the notice to the landlord's door. The notice stated that the tenant was moving out on September 30, 2015. The tenant cleaned the rental unit and took photographs on that date. The tenant also went to the landlord's residence on October 2, 8 and 22 to return the keys, but no one answered the door on the first 2 occasions.

The tenant wrote the landlord a letter requesting return of the security deposit. A copy has been provided, and it is dated September 30, 2015. The tenant testified that that she tried to give the landlord the letter, without success, and subsequently sent it to the landlord on October 30, 2015 by registered mail. Proof of that mailing has been provided. The landlord has not returned the security deposit and the tenant claims double.

The tenant's first witness (BS) testified that he is a friend of the tenant and went with the tenant to the landlord's residence. He spoke to the landlord's husband, and then the landlord showed up and the parties went into the landlord's office. The landlord was being very aggressive and intimidating and the witness told her that if she got violent, he'd call the police. The landlord responded by shoving her phone in the witness' face and said to go ahead and call. The landlord wanted the tenant to sign something about return of the keys to the rental unit, and the witness explained that the tenant only wanted her security deposit back, and advised the tenant to ensure that whatever the

tenant signed should also indicate what previous efforts the tenant made to return the keys.

The tenant's second witness (AM) testified that she is the tenant's daughter and lived in the rental unit with the tenant for a time. The witness was with the tenant when the tenant's notice to end the tenancy was given to the landlord. The witness was in the driver's seat of the car when the landlord was trying to rip open the door, and the tenant stopped the vehicle. At that point the landlord threw the tenant's notice into the vehicle and asked the parties to go into the landlord's office. The witness had to go to work, so the parties refused.

Analysis

Firstly, I find that neither party has complied with the *Act*. A landlord is required to ensure that move-in and move-out condition inspection reports are completed at the beginning and end of a tenancy, and the regulations go into great detail of how that is to happen. The landlord is also required to provide the tenant with a copy of a tenancy agreement within 7 days of the parties signing it. The landlord did not comply with the *Act* on either occasion.

A tenant is required to give the landlord a full month's notice, before the day rent is payable. The tenant testified that the landlord was given verbal notice of the tenant's intention to vacate the rental unit on September 9, 2015, to be moved out by September 30, 2015. Verbal notice on the 9th of the month is not sufficient.

A landlord is required to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the tenant testified that she tried to give the landlord her forwarding address but was not successful, so left it posted on the landlord's door. The tenant subsequently mailed the letter to the landlord by registered mail on October 30, 2015. The landlord testified that she never received any letter, however I don't accept that. The tenant has provided proof of that service, and the landlord filed the application for dispute resolution on October 28, 2015 which contains the tenant's forwarding address. Obviously the landlord had the forwarding address prior to October 28, 2015.

In the circumstances, I find that the tenant's notice to end the tenancy would not have taken effect until the end of October, 2015, and the landlord is entitled to one month's rent.

With respect to the landlord's application for loss of rental revenue, the landlord's witness testified that it took a couple of day to have the rental unit ready to rent. The landlord has not completed any condition inspection reports, and the tenant has testified that she left it clean and undamaged. Therefore, I find that the landlord has failed to establish that the rental unit could not have been re-rented for November 1, 2015, and the landlord's claim for loss of rental revenue for that month is dismissed.

Having found that the landlord is owed one month's rent, or \$850.00, I order the landlord to keep the \$425.00 security deposit in partial satisfaction of that claim. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 fling fee. I grant a monetary order in favour of the landlord for the difference, in the amount of \$475.00, and the tenant's application is dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby order the landlord to keep the \$425.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$475.00.

This order is final and binding and may be enforced.

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: February 16, 2016

Residential Tenancy Branch

