



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord and the tenant. The tenant had arranged for a witness to be available, however the witness was not called to provide any testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for cleaning the rental unit; changing locks; and replacement of hangers; 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 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 1, 2015 for a month to month tenancy beginning on May 1, 2015 for a monthly rent of \$485.00 due on the 1st of each month with a security deposit of \$242.50 paid. The tenancy ended when the tenant vacated the rental unit on July 30, 2015.

The landlord submitted the tenant gave him written notice on July 21, 2015 that he intended to end the tenancy effective July 30, 2015.

The tenant explained that during the tenancy he became ill for several days and he attended a clinic. While they could not provide a diagnosis the tenant submitted that his parents determined that the reason he was ill was because the rental unit (a single room) did not have any ventilation in the room. The tenant confirmed that his parents are not medical professionals.

The tenant submitted that he approached the landlord to install a window and at first the landlord agreed. After the landlord had taken no steps to do so he again approached the landlord who said he would not be installing a window.

The tenant asserted that the landlord was required by law to have proper ventilation in the rental unit. However, the tenant did not provide copies of any relevant municipal, provincial or federal legislation confirming this assertion.

The tenant submitted that as a result of these circumstances he had a right under law to move out of the rental unit without providing a 1 Month Notice to the landlord.

The landlord seeks compensation in the amount of \$485.00 for lost revenue for the month of August 2015.

The landlord testified that he started trying to re-rent the rental unit to a new tenant by placing an advertisement in the local university newspaper on July 23, 2015. He stated that he did rent one of the other rental units to a new tenant for the month of August 2015. He stated that he did not insist on the new tenant moving into the subject rental unit but rather gave the new tenant his choice of which of the available units he wanted to move into.

The landlord submitted that the tenant failed to clean the rental unit prior to vacating the rental unit. However through the testimony of both parties I determined that the areas that the landlord wanted cleaned included common areas of the kitchen and bathroom. The landlord submitted that this tenant was the only tenant living in the residential property at the time and so he was the only one using these areas.

In support of his claim the landlord submitted photocopies of several photographs. I note that the photographs were grainy black and white and provided little aid as evidence in assessing the condition of the rental unit and common areas.

The landlord also submitted that the tenant took some hangers with him when he vacated the rental unit. The landlord testified the tenant had locked the rental unit when he vacated it and did not leave the keys to the unit.

The landlord seeks compensation in the amount of \$95.34 for changing the locks; \$81.00 for cleaning the rental unit; and \$2.49 to replace the hangers. The tenant agreed he owed the landlord for hangers that he mistakenly took with him when he left the rental unit.

The tenancy agreement contained an addendum that listed in clause 14 that states: "On the day of moving out, clean up your room and hand over the key before 1:00 pm." I note there is no requirement in this addendum to include having the tenant clean the common areas such as the kitchen or bathrooms.

The tenant submitted that he had cleaned his room but that he had not used the kitchen during his tenancy and the condition of that room was unchanged from the start of the tenancy. The tenant also submitted into evidence a photograph showing he had left the keys to rental unit inside the rental unit.

The landlord confirmed that a Condition Inspection Report was not completed at either the start of the tenancy or at the end of the tenancy. The landlord stated that instead he took pictures at the end of the tenancy which he has submitted into evidence.

The landlord also submitted that the tenant failed to contact him to set up a move out inspection. The tenant submitted that the parties had agreed on July 29, 2015 to meet on July 30, 2015 but that the landlord later backed out. He stated that he tried calling the landlord on the 30th but that the landlord did not response so he left the keys inside the rental unit and left.

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.

I accept that the tenant acknowledges responsibility for replacement of hangers taken from the rental unit. I find the landlord is entitled to \$2.49 for this replacement.

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

From the tenants submission, I find that while he believed that he may have a reason under the *Act* to end the tenancy without a full 1 Month Notice he did not have authourity under the *Act* to end the tenancy as he did for the following reasons:

1. The tenant has provided no evidence to support his claim that the landlord violated the *Act*, regulation or tenancy agreement by being in breach of any applicable law to prevented him from providing a rental unit that meets all health and safety requirements by law;

2. Even if the tenant did have cause to end the tenancy for the landlord failing to comply with a material term of the tenancy agreement he has provided no evidence that he provided a written letter to the landlord to correct the breach within a reasonable time or he would vacate; and
3. The tenant simply gave the landlord a notice that he intended to end the tenancy with no reason given, as such the landlord had no opportunity to formally respond to any potential breaches the tenant was alleging.

As such, I find the tenant is responsible to pay rent for the month of August 2015 subject only to the landlord's obligation to mitigate his damages or losses.

From the landlord's testimony I accept that he took reasonable steps to advertise the availability of the rental unit as soon as he was notified of the tenant's intent to vacated the rental unit. However, in order to sufficiently mitigate his losses suffered as a result of the tenant improperly ending this tenancy the landlord should have made renting of this rental unit his priority.

Instead the landlord gave the choice to his new tenant as to what room he wanted to rent. As such, I find the landlord chose to not mitigate his losses resulting from this tenancy and cannot now claim compensation for the lost revenue. I therefore dismiss this portion of the landlord's claim.

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.

As per the addendum to the tenancy agreement I find the tenant was only responsible for cleaning his own rental unit and not the common areas. As the landlord's claim for cleaning is primarily based on cleaning the common areas, specifically the kitchen and bathroom, I find the landlord has failed to establish he is entitled to compensation or cleaning.

Furthermore, I find that the tenant's photographic evidence confirming he left the keys in the rental unit provides more substantive evidence that the keys were left. If the landlord did not have a master key so that he could enter the rental unit the tenant cannot be made to bear the costs to accommodate the landlord's failure to ensure he himself had access to the rental unit.

As such, I find the landlord has failed to establish the tenant owes for any cleaning or replacement of locks and I 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.

From the testimony of both parties I accept the tenant provided the landlord with his forwarding address on August 12, 2015 by regular mail. Allowing 5 days for delivery of the mail, pursuant to Section 90 of the Act, I find the landlord received the tenant's forwarding address by August 17, 2015 and as such had until September 1, 2015 to either return the deposit or file his Application with the Residential Tenancy Branch claiming against the deposit.

As the landlord submitted his Application for Dispute Resolution on August 21, 2015 I find the landlord has complied with the requirements of Section 38(1) and the tenant is not entitled to double the amount of the security deposit.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2.49** comprised of the cost of replacement hangers. I dismiss the landlord's claim to recover the \$50.00 fee paid by the landlord for this application because he was largely unsuccessful in his claim. I order the landlord may deduct this amount from the security deposit held in the amount of \$242.50 in satisfaction of this claim.

I grant a monetary order to the tenant in the amount of **\$240.01**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: March 08, 2016

Residential Tenancy Branch