



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession based on a mutual agreement to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 80 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application and the landlord was duly served with the tenant's written evidence package.

At the outset of the hearing, both parties confirmed that the tenant had already vacated the rental unit. The landlord confirmed that he did not require an order of possession. Accordingly, the landlord's application for an order of possession is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on July 1, 2013 and ended on September 28, 2014. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. A copy of the written tenancy agreement was provided for this hearing.

Both parties agreed that they had a previous hearing at the Residential Tenancy Branch ("RTB") whereby the tenant was granted a monetary order for the return of double her security deposit, totaling \$1,300.00, from the landlord. The tenant confirmed that the landlord has paid this order.

The landlord seeks a monetary order of \$3,940.29 plus the \$50.00 filing fee for his Application. During the hearing, the landlord voluntarily withdrew his claim of \$477.75 for bailiff costs, stating that he did not want to pursue this claim any longer. Accordingly, this portion of the landlord's claim is dismissed without leave to reapply.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act, Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Rental Loss

The tenant is required to abide by section 45(1) and provide the landlord with one month's written notice to end a month-to-month tenancy. The notice must be given on the day before rent is due. Both parties agreed that rent was due on first day of each month, as noted in the tenancy agreement. Both parties agreed that the tenant did not give written notice to end this tenancy. The tenant confirmed that she was in a medical treatment facility from August 7, 2014 until September 4, 2014. The tenant confirmed that she gave verbal notice to the landlord on September 4, 2014, not to return to the unit except to retrieve her belongings. Both parties agreed that the landlord returned \$1,250.00 to the tenant on September 10, 2014, which the tenant had paid in advance for September 2014 rent. The landlord said that it was to allow the tenant to secure another rental unit but the tenant said it was to return her rent so that she would not come back to the unit. The parties agreed that the tenant moved her belongings as of September 28, 2014. This is less than one month's notice.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the tenant was effectively given permission by the landlord to end her tenancy early, without giving one month's written notice, and that the landlord waived his right to enforce the above written notice period. I find that the landlord specifically induced the tenant to end her tenancy early based on a verbal agreement for the tenant not to return to the unit except to retrieve her belongings. This was confirmed by the landlord's return of the tenant's September 2014 rent, which occurred six days after the verbal agreement was made. The tenant relied on the landlord's statement and actions and did not expect to be pursued by the landlord for a loss of rent.

Accordingly, I find that the landlord is not entitled to September 2014 rent of \$1,250.00 because the landlord waived his rights and therefore, the tenant does not owe rent for this month.

Other Damages and Costs

I award the landlord \$105.00 for carpet cleaning in the rental unit because the tenant agreed to pay this amount during the hearing.

I award the landlord \$85.05 for changing the locks at the rental unit. The landlord provided a credit card printout for this amount incurred on August 19, 2014. The tenant testified that she authorized the landlord to change the locks on August 15, 2014 by way of telephone, so that her father would stop entering the rental unit and for safety concerns. Section 25 of the *Act* only requires a change of locks at the beginning of the tenancy at the request of the tenant. As the locks were changed near the end of the tenancy and it was done so because the tenant was concerned and authorized it, I find that the tenant is responsible for this cost.

I dismiss the landlord's claim of \$815.24 for travel and meal expenses. The landlord provided receipts of expenses incurred for him to travel back to the rental unit to clean it in August 2014. Both parties agreed that the landlord entered the rental unit without providing written notice to the tenant. I find that the landlord entered the unit illegally without notice and without the tenant's permission, while the tenant was still entitled to possession of the unit. The tenant had not given notice to move out of the unit, as the parties agreed this was done in September 2014, and the landlord was advised that the tenant was obtaining treatment at a medical facility. Therefore, I find that the landlord failed part 2 of the above test to show that the tenant is responsible for this cost.

I dismiss the landlord's claim of \$1,685.00 for rent for an unauthorized tenant living at the rental unit. I find that the landlord cannot prove that the tenant's father was living as a tenant in the rental unit, rather than as a guest. The tenant is entitled to have guests stay overnight at the unit. The landlord said that he was told by the property manager living in the building that the tenant's father was living at the unit, that his car was parked there and that other people saw the tenant's father there. The landlord said that no one checked inside the tenant's rental unit or had any other direct or personal knowledge of the tenant's father living there. The tenant said her father was only staying there as a guest, and that he visited her often, storing some items in her spare room. I find that the tenant's father was only visiting as a guest and that the landlord has failed part 2 of the above test to show that the tenant is responsible for this cost.

As the landlord was only partially successful in this Application, I find that he is not entitled to recover the \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$190.05 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

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: April 25, 2016

Residential Tenancy Branch