



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on March 14, 2016. The Landlord filed seeking a Monetary Order for damage to the unit site or property and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

On August 29, 2016 the Landlord submitted 51 pages of documentary evidence (documents and photographs) to the Residential Tenancy Branch (RTB). The Landlord affirmed that he served the Tenant with copies of the same documents that he had served the RTB. The Tenant submitted that the Landlord's evidence was served late as it was not posted to the door at her service address until August 31, 2016. The Tenant acknowledged receipt of the Landlord's application for Dispute Resolution and the Notice of Hearing letter via registered mail in March or April 2016.

On August 30, 2016 the Tenant submitted 14 pages of documentary evidence to the RTB. The Tenant testified she did not serve the Landlord with copies of her evidence. The Tenant submitted oral evidence that she had previous experience with the dispute resolution process when dealing with her own application for Dispute Resolution.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing letter provided to the Landlord and Tenant which states:

- 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

The Residential Tenancy Branch Rule of Procedure (Rule of Procedure) 2.5 stipulates that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch: a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing.

The only exception is when an application is subject to a time constraint, such as an application under *Residential Tenancy Act* section 38, 54 or 56 or an application under the *Manufactured Home Park Tenancy Act* section 47 or 49 [my emphasis added].

The Rule of Procedure 3.14 provides that the applicant's documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. ***In all events***, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added by underlining and bold text].

Rule of Procedure 3.11 stipulates that if an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

Rule of Procedure 3.17 provide that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

After consideration of the foregoing I find that to consider documentary evidence that was served late or not served upon the other party would be a breach of the principles of natural justice. Therefore, as the Landlord's evidence was not served upon the Tenant until six days before the hearing (hearing date not included) and the Tenant's evidence was not served upon the Landlord at any time, I declined to consider all documentary evidence submitted by both parties. I did however consider the both party's oral testimony.

Both parties were provided with the opportunity to present relevant oral evidence and to ask questions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation in accordance with the *Residential Tenancy Act* (the *Act*)?

Background and Evidence

The Tenant testified she has occupied this rental property since January 31, 1991 at which time she paid a security deposit of \$300.00. As of January 2014 the Tenant's rent was \$1,475.00 payable on the first of each month.

The Landlord testified he purchased the rental unit on July 15, 2015. He later changed his testimony and stated he purchased the property on June 15, 2015. The Landlord described the rental property as being half of a duplex which was built in either 1975 or 1980. He stated the duplex was two levels with 5 bedrooms and 2 bathrooms. He stated he recalled receiving a copy of the tenancy agreement during the purchase of the home; however, he did not have that document with him during the hearing.

No move in condition inspection report form was completed in 1991. The Landlord did not schedule a move out inspection and did not complete a condition inspection report form at the end of the tenancy.

The Landlord testified he served the Tenant a 2 Month Notice to end tenancy in July 2015 that was to be effective September 1, 2015. The Landlord later changed his submission to say he served the 2 Month Notice at the end of June 2015.

The Landlord initially submitted that he regained possession of the rental unit on August 27, 2015. The Landlord changed his testimony to say he regain possession on August 29, 2015.

The Landlord now seeks \$2,803.00 for damages which he alleged were caused to the rental unit due to the Tenant's negligence. He asserted the Tenant conducted a garage sale inside the rental unit and that she had allowed people to walk inside with their shoes on.

The Landlord stated his claim was comprised of the following: (1) \$262.27 carpet damage; (2) \$230.00 broken fireplace mantel; (3) \$145.00 cleaning two fireplaces; (4) \$230.00 cleaning supplies; (5) \$19.03 kitchen faucet knob; (6) \$80.00 front window blinds; (7) \$25.00 to replace faucet; (8) \$111.68 to repair and replace electrical plugs; (9) \$25.00 to remove the cement left in the ground from tree house; (10) \$552.50 drywall replacement and paint above tub; (11) \$25.00 for piece of missing kitchen

counter laminate; (12) \$135.00 repair walls behind kitchen cabinet; (13) \$30.00 patch exterior cable holes; (14) \$450.00 damaged exterior doors; (15) \$220.00 wall paper removal; (16) \$17.91 bathroom window broken lock; (17) \$80.00 interior door; (18) \$95.00 removal of exterior shed/cupboard; (19) \$12.50 animal feces and cigarette butts; (20) \$7.50 bathtub chip; (21) \$50.00 harassment to Landlord's contractors.

The Landlord testified that the majority of the above items claimed were either in the same condition/damaged state as they were at the time he first viewed the property or he could not recall their condition when he first saw the property. He asserted that the house was an "estate sale" as the owner had passed away and there was no property disclosure statement provided when it was listed for sale so he was not aware of certain items. The Landlord testified he did not have a building inspection completed on the rental property prior to completing the purchase as he and his family had construction experience.

The Landlord submitted that two items, the living room blinds and the wall damage behind the cabinet in the kitchen, were not in the same condition after the Tenant moved out, as they were when he first saw the property. He argued the blinds were thrown out to the street with the garbage and the wall damage in the kitchen was not visible when he viewed the property. The Landlord stated the Tenant had a large cabinet leaning up against the wall and when she moved out she took that cabinet with her exposing the holes that were in the wall behind it.

The Tenant testified the house had been built in 1965. She stated there was a piece of concrete on the property that had a date stamp of 1965 which is how she knew the age of the duplex.

The Tenant asserted the Landlord's application for Dispute Resolution was filed because she served him with a monetary order she had been awarded for the return of her deposit. She stated the Landlord filed for review consideration which was denied. Neither party raised any issues with me reviewing the previous Decision and Review Consideration Decision relating to the Tenant's application. Those Decisions are referenced on the front page of this Decision.

The Tenant submitted she vacated the rental unit on August 5, 2015 leaving her two adult sons to reside in the rental unit until the end of the month. The Tenant asserted that her sons moved out on August 25, 2015 and when she returned to the property on August 27, 2015 to conduct the final cleaning, the locks had already been changed by the Landlord. She argued she had possession until August 31, 2015 and that it was the Landlord's action of changing the locks that resulted in the unit not being fully cleaned; although she had conducted some cleaning before she vacated on August 5, 2015. The Tenant argued that the Landlord had told her not to worry about cleaning the carpets because he was going to remove them.

The Tenant disputed all of the items being claimed by the Landlord. She confirmed she had removed the living room window blinds and argued that they were her personal

blinds which she purchased during her 24 year tenancy. She also confirmed she had had posts put in the ground with concrete but that she had permission to do so from the previous owner. She noted that that concrete was in the ground at the time the house had sold.

The Tenant testified that she had not installed the shed/cabinet on the exterior of the house; she said it was in existence prior to the start of her tenancy. She argued that there were tenants in the rental unit for about ten years before she moved in and the same carpet was in the rental unit during both tenancies. She confirmed installing the wall paper border in one bedroom and asserted that she had permission to install it and it was left in good condition. The Tenant denied leaving dog feces or cigarette butts in the back yard. She asserted the feces could be from neighbourhood cats or other dogs. The Tenant admitted there were nail holes in the wall that was behind her cabinet; however, she did not have access to the unit to conduct the cleaning and final repairs after the Landlord changed the locks.

The Landlord submitted that he lived on the same street as the rental unit. He acknowledged that he changed the locks on the rental unit shortly after he saw the Tenant's sons move out and he check to make sure the unit was empty. The Landlord argued that he had repairs to complete before his new tenants moved into the rental unit. He stated he had two separate tenancies scheduled to begin September 1, 2015, one for the upper unit and one for the lower suite.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 21 of the Regulations provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the

state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred.

The undisputed evidence included, in part as follows: there was no move in or move out condition inspection report forms completed for this tenancy; the majority of the items being claimed by the Landlord were in existence at the time he purchased the rental property, which was two months prior to the end of this tenancy; and the Landlord changed the locks on the rental unit prior to September 1, 2015, the effective date on the 2 Month Notice which prevented the Tenant access to complete the final clean up and/or repairs.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Based on the above, pursuant to section 62 of the *Act*, I find as follows:

The Landlord provided insufficient evidence to prove he suffered a loss due to the Tenant's actions during the two month tenancy between this Landlord and Tenant. Rather, the irrefutable evidence was the majority of the damages were in existence at the time the Landlord first saw the property, prior to him purchasing it. The Landlord ought to have done his due diligence by having a building inspection completed so the existing damages and the condition of the property could have been reflected in the Landlord's purchase price. I note that even if I had considered the Landlord's documentary evidence, it would not have changed the aforementioned finding.

I find there was insufficient evidence before me to prove the actual condition of the rental unit and property at the start of this 24 year tenancy or at the time this Landlord purchased the property two months prior to the end of the tenancy. In addition, I favored the Tenant's submissions as they were forthright, consistent, and credible while the Landlord's submissions were inconsistent. As indicated above, the Landlord changed his testimony on several submissions such as when he purchased the property and even the age of the property.

I further find it was the Landlord's actions of changing the locks early that prevented the Tenant from completing the final cleaning and/or repairs. It was not the Tenant's breach of the *Act* that caused the Landlord to have to complete the cleaning/repair work.

Accordingly, as per the above, I dismiss the Landlord's application in its entirety, without leave to reapply.

The Landlord was not successful with his application; therefore, I declined to award recovery of the filing fee.

Conclusion

The Landlord was found to have submitted insufficient evidence and his application was dismissed, without leave to reapply.

This decision is final, legally binding, 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: September 08, 2016

Residential Tenancy Branch