



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC

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; his witness; the tenant and his legal counsel.

At the outset of the hearing the parties confirmed the landlord had served the tenant with his evidence. However, there was no such evidence in the Residential Tenancy Branch file. As the tenant had the landlord's evidence I have allowed the landlord to submit his evidence package to the Residential Tenancy Branch after the hearing. The landlord submitted it on December 13, 2016 by fax.

The landlord submitted a copy of his Application for Dispute Resolution; a copy of a Monetary Order Worksheet; a further breakdown of his claim for unpaid rent totaling \$20,800.00; an invoice from local municipal authorities for sewer; water; and waste collection in the amount of 1,186.80 for 2015; an invoice in the amount of \$3,300.00 for garbage removal and construction work; and a receipt for changing locks in the amount of \$114.00.

While both parties provided significant testimony regarding the background of why the landlord purchased the property and the relationship between the landlord; his sister and the tenant, I have only recorded the elements of that testimony that are relevant to the adjudication of the landlord's claim.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; unpaid utilities; garbage removal and repairs to the property; and replacement of door locks, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree that the tenancy began in fall of 2013 after the landlord purchased the property from his sister. The parties agreed the amount for rent was to be \$1,100.00 per month. The parties also agreed that in September 2015 they agreed the rent would be reduced to \$550.00 per month.

The parties also agreed that they had agreed that the tenant would complete major renovations to the property and that his work and supplies would be considered in lieu of rent. The parties agreed that there was no written agreement for the tenancy or for the scope of work including terms of compensation for work completed and how that would equate to amount of rent credited.

The landlord also submitted that part of the agreement included the tenant paying outstanding property taxes and utility costs for water, sewer, and garbage collection. The parties agreed the tenancy ended in February 2016.

The landlord seeks compensation for a total of 21 months at \$1,100.00 per month representing the period between January 2014 and September 2015 and 5 months at \$550.00.

The landlord submitted that he had not received any of the tenant's records regarding the renovation work or costs associated with that work until he received the tenant's evidence in response to this Application. The landlord submits that the tenant did make some cash rent payments during the course of the tenancy totalling \$1,350.00 and he paid past property taxes in the amount of \$3,700.00.

The landlord also indicated, on his Monetary Order Worksheet that he has provided the tenant with a credit of \$1,587.60 for work completed on the property, but provided no explanation as to how he determined this amount. I note that the amount of this credit allows the landlord to reduce his total claim from \$26,587.60 to \$25,000.00 – the allowable limit to be adjudicated by the Residential Tenancy Branch.

The landlord also submitted that the tenant had failed to pay water, sewage, and garbage collection charges for the period of 2014 and 2015. The landlord has submitted into evidence a copy of an invoice for the year of 2015 and estimates the amount for 2014 in the same amount as the invoice for 2015.

The landlord seeks compensation for the removal of garbage from the property and to re-do some of the work that the tenant had done as part of the renovations he had completed. As an example the landlord submitted that the tenant had removed stairs between the upper unit and the lower unit and he had those replaced. The landlord has provided no evidence of the condition of the rental unit at the start or end of the tenancy. In support of this claim the landlord has submitted an invoice for this work.

The landlord seeks compensation to have the locks changed at the end of the tenancy and has submitted an invoice confirming costs as not all keys were left for the property. The tenant did not dispute this claim.

As a result the landlord seeks monetary compensation in the following amounts:

Description	Amount
Rent (less credit for renovations completed) for duration of tenancy	\$19,212.40
Unpaid Utilities	\$2,373.60
Garbage removal and construction	\$3,300.00
Lock Replacement	\$114.00
Total	\$25,000.00

In his written submissions the tenant has provided a significant volume of emails between the parties beginning October 19, 2013 until January 30, 2016.

Included is an email dated October 10, 2015 in which the tenant states due to the cost of renovations and the payments he has made towards property taxes he has incurred costs totalling \$20,700.00. In another email dated January 30, 2016 the landlord wrote the tenant owes the landlord \$5,800.00 in unpaid rent plus \$1,050.00 for water and sewer.

The landlord broke this amount down to 4 months at \$1,100.00 for the period of June to September 2015 and 5 months at \$550.00 for the period of October 2015 to February 2016 less three payments. The email records that the three payments were made as follows: October 27 - \$250.00; November 9 - \$350.00; and December 17 - \$800.00. While the landlord submitted the total of these payments was \$1,350.00.

Another email chain between the two parties has the tenant writing that he had receipts for renovations totalling over \$18,000.00 and asking if the landlord looked at the receipts when he was there. In response, the landlord wrote:

“Your right, I didn’t look at the renovation receipts. I remember you put his pile of crumpled receipts on the table. I saw the property tax bill and realized it was unpaid. So that worried me. That was my immediate concern to deal with. It would have been nice if you could have a least summarized the renovations on one page and walk me through it. Rather than a shoe box of receipts that I need to try and figure out what was done.” [reproduced as written]

In his written submissions the tenant stated that until September 2015 the landlord never requested any payment of rent. In response to the landlord’s request at that time, the tenant submitted that he advised the landlord he was “ahead” on rent because of the costs of the renovations but he did make some payments to the landlord.

The tenant provided, in his written submissions, that at the start of the tenancy the rental unit was not habitable and that he had to complete significant cleaning and renovations to make the property livable. He submitted that in December 2013 he and his children moved into the upper unit and he began work on the basement suite.

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.

As such, in the case before me, the burden rests with the landlord to provide sufficient evidence to establish the above 4 noted points.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In addition, in this case, the parties have, based on the submissions of both parties, two relationships. That is there is one relationship as landlord and tenant and one as employer/employee or property owner/renovation contractor. I note that in regard to any of the issues as to the second relationship I do not have authority to determine any disputes. Furthermore, I am not qualified to determine if the property owner received any value from the work completed by the renovation contractor.

In regards to the claim for unpaid rent the burden of proving the amount of rent that was not paid is predicated on the amount of rent that was agreed to at the start of the tenancy. As such and in the absence of a written tenancy agreement, as the landlord is making the claim for lost rent the burden rests with him to establish the amount of rent that was agreed upon and remains unpaid.

Section 13 of the *Act* stipulates that the landlord is required to prepare a tenancy agreement in writing and that he must, within 21 days after the parties enter into a tenancy agreement, provide the tenant with a copy of the tenancy agreement.

While I accept that the parties have agreed that rent is in the amount of \$1,100.00 I note the parties also had a separate agreement that the tenant would not have to pay this amount per month in lieu of renovation work completed on the property.

However, the landlord has provided no evidence as to any agreement between the parties as to how they would determine the value of the work completed or how that would be applied to the payment of rent.

As noted above the burden of proving a loss rests on the person who is claiming compensation for the loss. In regard to the landlord's claim for rent in the amount of \$1,100.00 per month for the period of January 2014 to September 2015 and \$550.00 per month for the period of October 2015 to February 2016, the burden of proving that rent was not paid in cash or kind, as claimed by the landlord, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made. While I note that the payment of rent was agreed to be made in kind as opposed to cash, I find the same principle applies that the landlord must provide a receipt for the in kind payments.

When a landlord regularly provides receipts for cash or in kind payments there is an expectation that a tenant will be able to produce a receipt for cash or in kind payments that have allegedly been made or credited. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash or in kind payment has not been made.

When a tenant has previously made cash or in kind payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment.

In these circumstances the landlord's failure to provide receipts for cash or in kind payments made during this tenancy can significantly impair his ability to prove that the tenant did not pay a portion of rent. The landlord did not submit any other evidence, such as a copy of a payment ledger of either cash payment or in kind credits, to corroborate his claim that the tenant did not pay \$1,100.00 per month for the period of January 2014 to September 2015.

I also take note of the email submitted by the tenant dated January 30, 2016 that is addressed to the tenant from the landlord in which the landlord states the amount of outstanding rent is \$5,800.00. In addition, I find that the evidence submitted by the tenant is inconsistent in regard to the amount of work completed and its value in relation to any amounts of rent owed. In one email the tenant indicates he had put out over \$20,700 and in another he states over \$18,000.00.

As a result, I find the landlord has failed to provide sufficient evidence that the tenant owes any rent for this period. Even if I were able to determine the tenant was owed some rent, I also find there is insufficient evidence from either party to establish how much rent might be owed. Therefore, I dismiss the portion of the landlord's claim for unpaid rent for this period in the amount of \$23,100.00.

However, I accept, based on the submissions of both parties that effective October 2015 the nature of the tenancy and the work arrangements changed when the tenant agreed to provide the landlord with payments of \$550.00 per month and the payment of outstanding property tax payments forward to the end of the tenancy.

As such, I find for the period between October 15, 2015 and February 2016 the tenant was responsible for the payment of rent without benefit of the previous agreement to forgo rent payments in lieu of renovation work completed. As result, for this period I find the tenant was responsible for the payment of rent in the amount of \$2,750.00.

I accept the landlords' submissions that the tenant had made rent payments during the period between October 2015 and the end of the tenancy totaling \$1,350.00 and paid property tax in the amount of \$3,700.00 to be applied to the payment of rent. As a result, I find the tenant has fully paid the landlord for rent for this period and I dismiss this portion of the landlord's Application.

Section 13 of the *Act* stipulates that a landlord must prepare a written tenancy agreement and that each tenancy agreement must comply with any requirements prescribed in the regulations and must set out, among other things, which services and facilities are included in the rent.

I find that the landlord has not provided a copy of a written tenancy agreement that any clauses indicating whether or not water, sewer, or garbage collection are included in the rent. Additionally, I find the landlord has failed to provide any other evidence to establish that the tenant was responsible for these costs at any point during the tenancy.

I do note that the tenant's evidence does provide insight that email discussions may have been held in October 2015 in regard to the payment of these utilities, but I find no specific document that supports that the parties ever agreed on the tenant's obligations with regard to water, sewer and garbage collection.

As a result, I find the landlord has failed to provide any evidence that the tenant has violated the tenancy agreement and I dismiss the portion of the landlord's claim for \$2,373.60.

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.

In regard to the landlord's claim for compensation for the removal of garbage and repairs to correct changes the tenant made to the property, I find the landlord has failed to provide any evidence of the condition of the rental unit at the start of the tenancy or at the end of the tenancy. Furthermore, the landlord has failed to provide any evidence to establish that the garbage requiring removal and the repairs made were a result of this tenancy or the result of the relationship between the property owner and the renovation contractor. For these reasons, I dismiss the portion of the landlord's claim in the amount of \$3,300.00.

In the absence of any dispute from the tenant in regard to the landlord's claim to change locks on the property, I grant the landlord \$114.00.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$114.00** comprised of costs for lock replacement.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord 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: January 12, 2017

Residential Tenancy Branch