



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on July 21, 2016 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 8, 2016 for:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord states that photos were provided digitally as evidence. The Landlord states that he served the Tenant with evidence contained on a cd and cannot recall how the evidence was provided to the Residential Tenancy Branch (the "RTB"). The Tenant states that no cd or any other device was received as part of the Landlord's evidence package. The Landlord states that he provided this evidence as part of the package. The Landlord did not enquire with the Tenant in advance if the Tenant was able to read electronic evidence. It is noted that a cd was

provided to the RTB however there is no documentary description of the evidence provided on the cd.

Rule 3.10 of the RTB Rules of Procedure provides that any digital evidence to be relied upon at a hearing must be accompanied with, inter alia, a table of contents and a description for each digital file. In addition, the party seeking to provide digital evidence must confirm in advance of the hearing that the receiving party has the equipment or access to equipment that allows the party to read the evidence. As the Landlord failed to confirm whether or not the Tenant could read any digital evidence and given that there is no documentary description of any digital evidence I accept the Tenant's evidence of not having received any digital evidence. I therefore decline to consider any evidence contained on the cd provided to the RTB.

Issue(s) to be Decided

Has the Landlord breached the tenancy agreement or Act causing the damages claimed by the Tenant?

Has the Tenant breached the tenancy agreement or Act causing the damages claimed by the Landlord?

Who is entitled to the security deposit?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The tenancy originally started on June 11, 2016. A security deposit of \$450.00 was collected from the Tenant. Rent of \$900.00 was payable on the first day of each month and included water. The unit was then purchased by the Landlord and the Parties entered into another tenancy agreement with a start date of July 1, 2016. Rent remained the same but did not include any utilities and the Tenant was required to maintain the lawn and yard. On July 7, 2016 the Tenant was served with a once month notice to end tenancy for cause with a stated effective date of August 8, 2016.

The Tenant states that at the onset of the original tenancy, the unit was unclean, there were many damages in the unit and the yard required significant work. The Tenant states that a move-in inspection was conducted and the damages were noted on the report however the Tenant was not given a copy of the inspection report. The Tenant provides a written document,

prepared by the Tenant and containing witness names, including that of the roommate, as to the state of the unit at the onset of the original tenancy. The Tenant states that the Tenants cleaned the unit themselves and cleaned up the yard. The Tenant states that no subsequent inspection was conducted with the Landlord and that the signature on the move-in inspection report provided as evidence by the Landlord is not her signature. The Tenant points to her signature on the Tenant's application and evidence materials.

The Landlord states that he, his wife, the Tenant and the roommate were all present when the move-in condition inspection was done on July 1, 2016 and that the Tenant signed the report at the same time.

The Tenant states that they moved out of the unit before July 21, 2016. The Tenant states that they left the keys in the unit after they moved out but did not notify the Landlord. The Tenant states that they served the Landlord with their application by registered mail on July 21, 2016 and that their application contained their forwarding address.

The Landlord states that the Tenants informed him on August 3, 2016 that they had moved out leaving the keys. The Landlord states that he did not have his own key for the unit as he was not given a copy of the house key by the previous landlord.

The Landlord states that the Tenant attended the unit on August 5, 2016 with a friend and as the Landlord had no keys the Tenants opened the back door with a rod while the Landlord was present. The Landlord states that he tried to stop them from entering the unit this way but the Tenant would not listen. The Landlord states that he conducted a move-out inspection with the Tenant at this time but the Tenant did not sign the report. The Landlord states that a copy was provided to the Tenant.

The Tenant states that no move-out inspection was done and no copy of a report was received. No copy of the inspection report was provided to the RTB as evidence for the hearing.

The Tenant states that the Landlord had no reason to evict the Tenants. The Tenant states that she is a senior and does not have any dog business as alleged in the eviction notice. The Tenant states that the Landlord put the one month notice to end tenancy for cause on the door and the Tenant believed that she had to move out of the unit on the effective date of the Notice.

The Tenant states that the house was originally so damaged that it should have been condemned. The Tenant claims compensation equivalent to a month's worth of rent. The Tenant also claims compensation for the costs of moving. No invoice for these costs was provided. The Tenant claims return of the security deposit.

The Landlord states that he received the Tenant's forwarding address in the Tenant's application so the Landlord made his own application and served the Tenant in person at the Tenant's forwarding address with his application.

The Landlord states that the Tenant failed to pay any rent for August 2016 and the Landlord claims \$174.19 for the period August 1 to 8, 2016 inclusive. The Landlord states that he used this time frame as the basis for his rental claim as he had ended the tenancy for August 8, 2016. The Landlord states that the unit was subsequently rented at the same rental amount for September 1, 2016 having advertised the unit as soon as the Landlord knew it was empty. The Tenant states that no rent is owed as the Landlord ended the tenancy and the Tenant moved out as required and before the effective date of the Notice. The Tenant states that because of the effective date of the notice to end tenancy the Tenant thought she had to move out of the unit immediately.

The Landlord states that the Tenant failed to pay utilities and claims an average amount of \$150.00. The Landlord states that the Tenant had not put the utilities in her own name although she was required to do so and that the utilities bills for hydro and water came to the Landlord.

The Landlord states that the Tenant left the lawn uncut and the yard unmaintained. The Landlord claims \$80.00 and provides a copy of an invoice. The Tenant states that the lawn was mowed a week prior to their move-out and did not require mowing.

The Landlord states that the Tenant left the unit unclean and with several damages and the Landlord claims a global amount of \$425.00. The Tenant states that the unit was cleaned and that the damages claimed by the Landlord were pre-existing damages and included damages that the original landlord had promised to repair. The Tenant states that the original landlord did make some of the promised repairs such as paint to the kitchen, repairs to a fence and

replacement of a winder in the back door. The Tenant states that she and her sister cleaned the unit at move-out and that the appliances were cleaned inside and underneath.

Analysis

Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the landlord or tenant must compensate the other for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

Given the Tenant's oral evidence of the state of the unit at move-in, supported by witness signatures, and considering that the signature on the Landlord's copy of a move-in condition report does not appear to be the same as other samples of the Tenant's signature I find that the Tenant has substantiated that no copy of a move-in report was provided to the Tenant. I also find that the Landlord's copy of the move-in report is not credible evidence of the state of the unit at move-in. Given that the Landlord did not provide a copy of a move-out report I find that the Tenant has also substantiated on a balance of probabilities that no move-out inspection was conducted.

Given the lack of photo evidence or a move-out condition report and considering the Tenant's supported evidence of the state of the lawn at the start of the original tenancy I find that the Landlord has not substantiated that the Tenant left the lawn and yard unattended beyond its original state. I dismiss the claim for yard repairs.

Section 37 of the Act provides that when a tenant vacates a rental unit, 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. Accepting that the Landlord became aware on August 3, 2016 that the Tenant had moved out of the unit and considering that the Tenant did not inform the Landlord of an earlier move-out date, I find that the tenancy ended on August 3, 2016. As the tenancy was ended by the Landlord by serving the notice to end tenancy, I find that no rent was payable after the tenancy ended. As the Landlord did not

advertise the unit earlier than after the Tenant moved out, particularly at the point where the time had passed for the Tenant to dispute the notice to end tenancy, I find that the Landlord failed to take any measure to mitigate lost rental income past August 3, 2016. I find therefore that the Landlord has substantiated an entitlement to unpaid rent in the amount of **\$90.00** ($\$900/30 = \30.00 per day x 3 days).

Given the lack of move-out condition report, that there is no credibility in the move-in report provided by the Landlord, considering the Tenant's supported evidence of pre-existing damage, and finally considering that the global claim that does not set out particulars for damage and cleaning, I find that the Landlord has failed to substantiate that the Tenant left the unit with more damage than was there at the outset. I therefore dismiss the Landlord's claim for damages to the unit.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs must prove, inter alia, that costs for the damage or loss have been incurred or established. No copies of the utility bills were provided. Given the lack of utility bills I find that the Landlord has not substantiated the costs claimed and I dismiss the claim for utility costs. As the Landlord's application has met with minimal success I decline to award recovery of the filing fee.

Although I accept that the Landlord did not provide the true copy of a move-in report and did not conduct a move-out inspection, the issue of extinguishment of the Landlord's right to claim against the security deposit is not relevant as it only applies to damage to the unit. The Act does not extinguish any rights of the Landlord to retain the security deposit to make a claim against it for unpaid rent. As the Landlord has been found entitled to \$90.00, I deduct this amount from the security deposit plus zero interest of \$450.00 leaving **\$360.00** owed to the Tenant.

As the Act allows the Landlord to serve a notice to end tenancy and as the Act also allows the Tenant to dispute the validity of the notice to end tenancy I find that the Tenant has not substantiated that the Landlord breached the Act in serving the notice to end tenancy by having an invalid reason to end the tenancy. The Tenant could have chosen to dispute the notice at the time it was served however the Tenant chose instead to move out of the unit. As such I

dismiss the compensation claimed in relation to the Landlord's act in ending the tenancy and the Tenant moving out of the unit.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$360.00**. If necessary, this order may be filed in the Small Claims Court and 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: February 3, 2017

Residential Tenancy Branch