



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF – Landlords’ application
 MNSD MNSD FF – Tenants’ application

Introduction

These matters convened by teleconference on January 5, 2017 for 83 minutes, at which time the hearing time expired. The matters were adjourned and both parties were advised their attendance at the reconvened hearing was mandatory and if they failed to appear at the reconvened hearing a decision would be issued in their absence. An Interim Decision was issued January 16, 2017 outlining orders and my decision that the Landlords’ application would proceed against the male Tenant. As such, this Decision must be read in conjunction with my January 16, 2017 Interim Decision.

The matters were scheduled to reconvene by teleconference on February 22, 2017 to hear submission relating only to the Tenants’ application; as the submissions relating to the Landlords’ application were completed during the January 5, 2017, session. The Landlord appeared on February 22, 2017; however, despite my informing the parties their attendance was mandatory at this reconvened hearing; and despite the hearing being reconvened to hear the submissions relating to only the Tenants’ application, no one appeared at the February 22, 2017 teleconference on behalf of the Tenants.

The Landlord confirmed receipt of my Interim Decision and Notice of Hearing documents. During the January 5, 2017 hearing, both parties were given the opportunity to choose the method they wished to be sent the Interim Decision and Notice of hearing documents. The Tenant requested that his copies be sent to him by email and provided his email address in his oral submissions. The Residential Tenancy Branch (RTB) record indicates the Interim Decision and Notice of Reconvened Hearing were emailed to the Tenant on January 18, 2017.

In addition, both parties were advised during the January 5, 2017 hearing that if they did not receive my Interim Decision and/or Notice of hearing documents they should call the RTB at either one of the numbers listed on the bottom right hand corner of the letter they used to find the access code to sign into the January 5, 2017 teleconference hearing. Both parties confirmed they understood that process before the hearing was adjourned. There was no indication in the RTB record that either Tenant contacted the RTB prior to this reconvened hearing. After consideration of the foregoing, I continued the February 22, 2017 reconvened hearing in absence of the Tenants.

During the January 6, 2017 hearing both parties were provided with a full opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions

relating to the Landlords' application. Although I was provided a considerable amount of evidence including: verbal testimony; written submissions; digital evidence; and photographic evidence relating to the Landlords' application; with a view to brevity in writing this decision I have only summarized the party's respective positions below.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to unpaid rent?
2. Have the Landlords proven entitlement to monetary compensation for repairs; cleaning; and garbage removal?
3. Have the Tenants proven the merits of their application?

Background and Evidence

It was undisputed that the parties entered into a verbal tenancy agreement which commenced on January 20, 2013. Rent of \$700.00 was payable on the first of each month. On January 20, 2013 the Tenants paid \$350.00 as the security deposit. When entering into the tenancy agreement and paying rent the Tenants primarily dealt with the Landlord's wife.

The Landlord's submissions have been summarized as follows:

- Initially the Tenants were served a 1 Month Notice to end tenancy for cause and then the Landlords changed their minds and served the Tenants a 2 Month Notice to end tenancy for landlord's use of the property which was to be effective November 30, 2015.
- The parties mutually agreed the \$350.00 security deposit would be put towards payment of December 2015 rent. The Tenant did not dispute that he agreed to use his security deposit towards rent.
- The Tenants did not pay rent for November 2015; December 2015; January 2016; February 2016; or March 2016.
- The Tenant sent the Landlord a text message on March 6, 2016 stating "your basement is empty we moved out our stuff".
- The Tenants usually paid their rent in cash and every time a payment was received the Landlord's wife would issue them a receipt.
- The Landlord asserted the Tenants left the rental unit with some damage; without cleaning the carpets; and with garbage that had to be removed.

The Landlord sought **\$5,653.25** which was comprised of rent for the five months of November 2015 through to March 2016 (5 x \$700.00 per month less the \$350.00 security deposit) totalling \$3,150.00; plus \$140.00 rent for the six days the Tenants occupied the unit in April 2016; plus \$2,063.25 for repairs; \$200.00 rug cleaning; and \$100.00 for garbage removal. The Landlord referenced the receipts, estimates, invoices, and photographs submitted in his evidence.

The Tenant disputed all amounts claimed by the Landlords. His arguments and submissions are summarized as follows:

- They fully vacated the property by April 1, 2016. Later in his submissions the Tenant stated he told the Landlord's wife they still had to return and finish cleaning which they finished on April 6, 2016.
- Initially I heard the Tenant state all of his rent was paid in full on the first of each month and that it was never late. Then he stated that only their January 2016 rent was paid in full and paid in cash to the Landlord's wife as they did not know who to pay for February.
- The Landlords were out of the Country during February and March 2016 and did not tell the Tenants who they were to pay rent too.
- They received the 2 Month Notice to end tenancy on September 29, 2015 and submitted a copy into evidence.
- They entered into a verbal agreement with the Landlords that they could stay in the rental unit after November 30, 2015; until they found another place, as long as they paid their rent.
- An altercation occurred on January 19, 2016 between the Landlords and Tenants when the Landlords attempted to remove the Tenants' possessions from the rental unit. The police attended and the Tenants continued to occupy the rental unit until April 2016.
- The Landlord conducted a walk through on March 25, 2016 and the Tenant asserted they vacated by April 1, 2016.
- The Tenant alleged the Landlord's estimate for repairs was false because the company was not registered with the Better Business Bureau and the telephone number belonged to a different drywall company.
- The Tenant submitted pictures which he stated were taken on April 6, 2016. He acknowledged that they had broken a hook on the light and he had left the fan and garbage can inside the rental unit as displayed in the Landlords' photographs. He denied leaving the stains on the carpet.

In closing the Landlord confirmed they were out of the country from January 26, 2016 to March 16, 2016. The Landlord argued that he would not serve the Tenants the Notices to end tenancy if they were paying their rent. He confirmed going into the rental unit on January 19, 2016 because rent remained unpaid and the Landlord was not aware of the process to properly evict the Tenants.

Analysis

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*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* 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 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 provides that the party making the claim for damages must satisfy each component of the following: the other party failed to comply with the Act, regulation or tenancy agreement; the loss or damage resulted from that non-compliance; the amount or value of that damage or loss; and the applicant acted reasonably to minimize that damage or loss. I concur with this policy and find it is relevant to the Landlord's application for Dispute Resolution.

It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their position and their argument or claim fails.

Landlord's application

I favored the Landlord's submissions that the Tenants failed to pay rent for six months starting November 1, 2015 up to and included April 1, 2016. I favored the Landlord's submissions as they were forthright, credible, and consistent with his actions of serving the Tenants with two Notices to end tenancy.

I found the Tenant's submissions that he paid his rent in cash to be unsupported. There was no documentary evidence presented to prove the Tenant had taken cash out of his bank account; no documentary evidence to prove the Tenant had obtained cash on or around the first of each month by any other means; and no documentary evidence to support his allegation that he gave cash to the Landlords between November 1, 2015 to April 1, 2016 for the purpose of paying his rent.

Furthermore, the Tenant did not dispute that he agreed to use his security deposit as partial payment towards December 2015 rent. Also, by his own submissions, the Tenant admitted he had not paid rent while the Landlords were out of the country.

In addition, the Tenant submitted contradictory testimony stating he finished the move out by April 1, 2016 and then stated he remained in possession of the unit until April 6, 2016 to finish cleaning.

Based on the above, I found the Landlords' submissions that the Tenants failed to pay their rent to be plausible given the circumstances presented to me during the hearing.

In determining the amount of rent owed to the Landlords I must consider the matters relating to the 2 Month Notice. The 2 Month Notice was served upon the Tenants on September 29, 2015 listing an effective date of November 30, 2015. The Tenants did not dispute that Notice; therefore, I find the Tenants were conclusively presumed to have accepted that this tenancy ended **November 30, 2015**, as per section 49(9) of the *Act*.

Section 51(1) of the *Act* provides that tenants who are served a 2 Month Notice are entitled to compensation equal to one month's rent. That compensation can be considered payment for the last month's rent. Therefore, I find the November 2015 rent to be paid in full by application of the one month's compensation afforded to the Tenants by receipt of the 2 Month Notice. As such, the Landlords' claim for unpaid November 2015 rent is dismissed.

As noted above, this tenancy ended **November 30, 2015**, in accordance with the 2 Month Notice. It is reasonable to conclude the Tenants would be expected to pay for their occupation of the rental unit until such time as the Landlords regained possession; as provided by Residential Tenancy Policy Guideline 3. Therefore I find the Landlords are seeking money for use and occupancy of the rental unit for the period of December 1, 2015 to April 6, 2016; not rent.

I accept the parties mutually agreed the \$350.00 security deposit would be applied to the required payment for use and occupancy during December 2015. The Landlords submitted documentary evidence which included a receipt dated December 16, 2015 which indicates the Tenants paid \$350.00 for December. Therefore, I conclude that when the security deposit was applied to the December 16, 2015 payment the Tenants had paid the full amount owed for December 2015 occupation. Accordingly, I dismissed the Landlords' claim for December 2015 use and occupation.

I accept the Landlords' submissions that no payments were received after December 16, 2015. Therefore, I conclude the Landlords are entitled to payment for use and occupancy and any loss of rent for the period of January 1, 2016 to April 6, 2016 in the amount of **\$2,238.00** (\$700.00 per month x 3 months of January 2016 to March 2016; plus 6 days in April 2016 at \$23.00 per day daily rate), pursuant to section 67 of the *Act*.

Section 37(2) 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.

Upon review of the Landlords' photographic evidence; in absence of a completed move-in or move-out condition inspection report form; in absence of evidence to support when the unit was last painted; and in the presence of the Tenant's disputed oral testimony and evidence; I find the Landlords submitted insufficient evidence to prove the rental unit required \$2,063.25 in repairs to drywall; mouldings; and painting. Accordingly, the claim for repairs is dismissed, without leave to reapply.

The Tenant admitted to leaving some articles behind and admitted to breaking the light fixture. I accepted the Landlords' photographic evidence which provided a limited view of the level of cleanliness the rental unit had been left by the Tenants. I therefore, concluded the Tenants left the rental unit requiring some repairs and cleaning, in breach of section 37 of the *Act*.

Although there was sufficient evidence to prove the Tenants were in breach of section 37 of the *Act*, in absence of an estimate or receipts to prove the actual cost or value of the required repairs and carpet cleaning, I find Landlords submitted insufficient evidence to prove the value of the loss; as required and outlined in Policy Guideline 16. Accordingly, the amounts claimed for cleaning and garbage removal are dismissed, without leave to reapply.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have partially succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

The Tenant is hereby ordered to pay the Landlord the total award of **\$2,338.00** (\$2,238.00 + \$100.00), forthwith.

In the event the Tenant does not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$2,338.00** which may be enforced through Small Claims Court upon service to the Tenant.

Tenants' application

As indicated in my January 16, 2017 Interim Decision, Rule of Procedure 7.3 provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenants at the February 22, 2017 reconvened hearing; the telephone line remained open while the phone system was monitored for eleven minutes and no one on behalf of the applicant Tenants called into the hearing during that time.

In determining the outcome of the Tenants' application I considered Rule of Procedure 7.4 which provides that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In the absence of any submissions from the applicant Tenants, I find the Tenants failed to prove the merits of their application. Accordingly, I order the Tenants' application dismissed, without liberty to reapply.

Conclusion

The Landlords were partially successful with their application and were awarded **\$2,338.00** monetary compensation. The Tenants did not appear at the reconvened hearing and their application was dismissed in its entirety.

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: February 28, 2017

Residential Tenancy Branch