



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage; unpaid and/or loss of rent; and, authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant in the amount claimed?
2. Is the landlord authorized to retain all or part of the tenant's security deposit?

Background and Evidence

The tenancy started on August 1, 2015 on a month to month basis. The tenant paid a security deposit of \$2,650.00. The tenant was required to pay rent of \$2,700.00 on the first day of every month. The tenant vacated the rental unit at the end of August 2016.

By way of this application, the landlord seeks compensation of \$2,700.00. The landlord did not provide a detailed calculation or Monetary Order worksheet; however, the amount claimed coincides with the monthly rent and the landlord had made submissions with respect to receiving inadequate notice to end tenancy from the tenant. The landlord had also indicated that some damage was done to the property and a piano remained at the property until September 4, 2016 with the Application for Dispute Resolution; however, no specific loss was attributable or claimed with respect to these issues I did not consider these matters further. Accordingly, the focus of the remainder

of this decision is whether the landlord is entitled to recover unpaid and/or loss of rent from the tenant in the amount of \$2,700.00.

The basis for the landlord's claim for unpaid and/or loss of rent against the tenant is that the tenant did not give the landlord at least one full month of notice before ending the tenancy. It was undisputed that the tenant prepared a written notice to end tenancy on August 22, 2016, which the landlord received on August 23, 2016 ("the tenant's notice"). In the tenant's notice the tenant indicated the landlord was in breach of a material term of the tenancy agreement by failing to repair water leaks and pointed to section 45(3) of the Act as the basis for ending the tenancy. There is no effective date in the tenant's notice but the tenant vacated the property at the end of August 2016 and did not pay rent for September 2016. The tenant did not authorize the landlord to retain any part of the security deposit in writing.

The landlord testified that the landlord took steps to find replacement tenants for the rental unit and was successful in doing so effective September 15, 2016 for the monthly rent of \$3,500.00. The landlord confirmed that the landlord collected one-half of \$3,500.00 from the incoming tenants for the month of September 2016.

The tenant was of the position that the tenant was permitted to end the tenancy without a full month of notice because there were repeated water leaks in the rental unit that were not sufficiently repaired and had become a health hazard due to the potential for a slip and mould, especially for her elderly parents who were residing on the lower floor of the rental unit. The tenant took pictures of water on the floor in the rental unit. In the written notice of August 23, 2016 the tenant pointed to section 45(3) of the Act as a basis for ending the tenancy early.

The landlord acknowledged that the tenant made a number of complaints about water leaks starting at the end of July 2016 and into the month of August 2016; however, the landlord had a plumber attend the property to inspect the plumbing and make necessary repairs, if any, on three occasions: July 29, 2016; August 8, 2016 and August 24, 2016. During one visit by the plumber, no leak could be found but a pipe appeared old so the plumber replaced it anyways and waited at the property for another two hours to see if a leak occurred. No further leaks occurred and the landlord suggested the tenant may have poured water on the floor in taking pictures of water on the floor of the rental unit.

The tenant's husband stated that the landlord and the plumber spoke in a different language that he could not understand and suggested the landlord and the plumber

were in co-hoots since the plumber would not speak to the tenant's husband about the issue.

The tenant also made allegations that the landlord was attempting to take withdrawals of \$2,700.00 from the tenant's bank account after the tenancy ending, causing the tenant to incur NSF charges each time. The landlord was strongly cautioned that a landlord does not have the right to try to withdraw funds from a tenant's bank account for rent after a tenancy has ended. The landlord denied doing so and stated that it is the tenant who must go to her bank and stop the pre-authorized payments from coming out. This issue is not part of the application before me and I suggested that both parties determine how a pre-authorized payment is stopped and act accordingly. Should the tenant determine that the landlord is responsible for attempting to take money from the tenant's bank account the tenant may file her own Application for Dispute Resolution to recover any damages or losses that resulted from such actions.

The landlord was also cautioned that a landlord may not require or collect a security deposit that exceeds one-half of the monthly rent, even if the tenant agrees to pay a greater amount and collecting more than one-half of the monthly rent is a violation of section 19 of the Act.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In order for a tenant to end a tenancy, the tenant must give notice to the landlord in a manner permitted under section 45 of the Act. Below, I have reproduced section 45 of the Act for further reference.

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

A tenant with a periodic tenancy (i.e.: month to month) may end a tenancy by giving the landlord at least one full month of written notice, as provided under section 45(1) of the Act. In this case, it is undisputed that the tenant did not give the landlord at least one full month of notice and the tenant relies upon section 45(3) of the Act which permits an

earlier end to the tenancy in certain circumstances. At issue is whether the tenant ended the tenancy as permitted under section 45(3).

I have reviewed the tenant's notice of August 22, 2016 carefully. In writing the notice the tenant states that the landlord was in breach of a material term of the tenancy agreement by failing to resolve the leaking bathroom and pointed to a municipal by-law and section 32 of the Act [*Landlord and tenant obligations to repair and maintain*] as being the breach. In the tenant's notice the tenant states that the breach occurred on July 29, 2016 and "I feel that a responsible amount of time to correct this breach is 24 days from today. Therefore, I will be ending my tenancy." [my emphasis underlined]

The purpose of issuing a written breach letter is to afford the other party the opportunity to correct the breach within a reasonable amount of time after receiving the breach letter before further action is taken. In this case, the tenant indicates she is giving the landlord 24 days from the date of the breach letter to correct the breach; however, the tenant did not give the landlord that amount of time before ending the tenancy. The tenant proceeded to end the tenancy on August 31, 2016 and in doing so deprived the landlord the 24 days to make all necessary plumbing repairs. Therefore, I find the tenant did not end the tenancy in a manner that complies with section 45(3) of the Act and the tenant was not in a position to end the tenancy effective August 31, 2016.

In light of the above, I find the tenant did not end the tenancy in accordance with section 45(1) or 45(3) of the Act and the tenant violated the Act by giving insufficient notice to end tenancy to the landlord.

Having found the tenant violated the Act by failing to give adequate notice to end tenancy to the landlord, I find the landlord is entitled to recover the loss that resulted from the tenant's violation of the Act. The landlord received \$1,750.00 in rent for September 2016 from the incoming tenants and would have received \$2,700.00 from the tenant had the tenant not violated the Act and provided sufficient notice to end tenancy. Therefore, I find the landlord is entitled to recover the loss of \$950.00 from the tenant and the balance of the landlord's claim is dismissed.

The landlord was partially successful in this application and I award the landlord recovery of one-half of the filing fee paid for this application, or \$50.00.

In light of the above, the landlord is awarded a total amount of \$1,000.00. Since the landlord is still holding the tenant's security deposit of \$2,650.00 I authorize the landlord

to deduct \$1,000.00 from the security deposit and I order the landlord to return the balance of \$1,650.00 to the tenant without further delay.

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*, I provide the tenant a Monetary Order in the amount of \$1,650.00 with this decision to serve and enforce upon the landlord if necessary.

Conclusion

The landlord was partially successful in this application and has been authorized to deduct \$1,000.00 from the tenant's security deposit. The landlord is ordered to pay the balance of the security deposit of \$1,650.00 to the tenant without further delay. The tenant is provided a Monetary Order for this amount to serve and enforce upon the landlord if necessary.

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: August 30, 2017

Residential Tenancy Branch