



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (“the “Act”).

The Landlord filed an Application requesting a monetary order for unpaid rent and damage; to keep the security deposit; and to recover the cost of the filing fee.

The Tenant filed an Application for money owed or compensation for damage or loss under the Act, Regulation or Tenancy Agreement and for the return of the security deposit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to compensation for damage?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to money owed or compensation?

- Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The Parties testified that the tenancy began on May 1, 2017, as a one year fixed term tenancy. Rent in the amount of \$1,350.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$675.00.

The Landlord provided a copy of the tenancy agreement and addendum.

The Landlord testified that the Tenant ended the fixed term tenancy early by moving out of the rental unit on June 25, 2017.

July Rent

The Landlord testified that he suffered a loss of rent for July 2017, because he received late notice that the Tenant was moving out and he was unable to re-rent the unit for July 2017. The Landlord testified that he attempted to re-rent the unit by placing an advertisement on local websites. The Landlord was able to find a new tenant for the rental unit beginning August 1, 2017.

In response, the Tenant submitted that he had to move out of the rental unit early because the Landlord entered his rental unit improperly on one occasion. The Tenant submitted that he had privacy concerns.

Lease Break Fee

The Landlord is seeking a lease breaking fee in the amount of one month's rent as a penalty for the Tenant breaking the lease. The Landlord submitted that the addendum to the tenancy agreement has a clause that states the Tenant must pay one months' rent as a penalty and he forfeits the security deposit if the Tenant breaks the one year tenancy agreement.

In response the Tenant submitted that he signed the tenancy agreement and addendum; however, there are terms in the addendum that contradict the Act.

Carpet Cleaning

The Landlord is seeking compensation for carpet cleaning costs. The Landlord testified that the Tenant failed to clean the carpet at the end of the tenancy. The Landlord submitted that there were ink spots and coffee stains on the carpet. The Landlord provided photographs of the stains. The Landlord submitted that he rented a carpet cleaning machine and cleaned the carpets.

The Landlord is seeking compensation of \$150.00 for the cost of the machine rental; the cleaning solution; and his labour to clean the carpets.

In response, the Tenant submitted that he cleaned the unit at the end of the tenancy using a vacuum. The Tenant did not use a carpet shampoo type of cleaner. The Tenant acknowledged responsibility for the stains. The Tenant submitted that the Landlord did not hire a professional cleaner. The Tenant submitted that the Landlord's photographs were taken before the Tenant cleaned the carpets.

The Landlord clarified that his photographs were taken after the Tenant moved out of the rental unit.

Repairs

The Landlord submitted that the Tenant is responsible for damage to the exterior door; mouldings; and door frames. The Landlord submitted that he received an estimate for the repair costs, but he did not get all the damage repaired. The Landlord did not provide a breakdown of the damage and costs for repairing the items he is claiming compensation for.

In response, the Tenant submitted that he left the rental unit clean and there was no damage. The Tenant submitted that he took videos and images of the unit on June 25, 2017. The Tenant provided photographs and video files of the rental unit.

The Landlord testified that he did not complete a Condition Inspection Report to record the state of repair and condition of the rental unit at the start of the tenancy and the end of the tenancy.

Tenant's Claims

The Tenant is seeking compensation for the following items:

Extra utility charge	\$200.00
Moving expenses	\$428.00
Half of June Rent	\$850.00
Insurance	\$102.00
Canada Post	\$109.00

Utility Charge

The Tenant testified that he approached the Landlord to get permission for his parents to live in the rental unit for a short period of time. He submitted that he reached an agreement with the Landlord that his parents could stay if the Tenant agreed to pay money towards the extra utility costs. The Tenant paid the Landlord \$200.00 for utilities but is seeking a refund because he submitted that his parents only stayed for a few days.

The Landlord is not in agreement to refund the money he received for additional utility costs. He submitted that the Tenant's parents stayed in the unit from the beginning of May 2017, into June 2017.

Moving Expenses and Rent

The Tenant testified that he had to move out of the rental unit early because the Landlord entered his rental unit improperly on one occasion. The Tenant submitted that he had privacy concerns. The Tenant submitted that the Landlord has a cat and the Tenants did not want to live in a rental property that has cats.

When asked if he raised the issue verbally or in writing, the Tenant stated that he told the Landlord not to enter without permission, but he did not put his concerns into writing.

The Tenant is seeking compensation of \$428.00 for moving costs; \$850.00 for half a month's rent; and \$109.00 for mail forwarding costs.

In response, the Landlord submitted that he is not in agreement to pay any costs for the Tenant choosing to break the lease and move out of the rental unit.

The Landlord testified that nobody entered the Tenant's unit. The Landlord submitted that his four year old son approached the entry door and attempted to enter the unit but

did not actually enter. The Landlord submitted that he put a lock on the entry door higher up, to prevent any future incidents.

Insurance

The Tenant submitted that he wants the Landlord to reimburse him for the cost of renters insurance for two months.

In response, the Landlord submitted that the requirement for renters insurance was part of his advertisement for the unit and the Tenant agreed to the term prior to moving into the rental unit. He submitted that the Tenant signed the tenancy agreement agreeing to that term.

TV Deposit

The Tenant submitted that he paid a \$100.00 deposit for a tv cable box. He submitted that the cable box was left in the unit at the end of the tenancy and he wants his deposit returned.

The Landlord acknowledged that the Tenant paid a \$100.00 deposit and left the cable box in the unit at the end of the tenancy.

Security Deposit

The Tenant has applied for the return of the security deposit. The Tenant submitted that he provided his forwarding address to the Landlord on June 25, 2017.

Analysis

Section 7 of the Act states,

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. 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.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with

respect to property, money or services, the value of the damage or loss is established by the evidence provided.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Security Deposit

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 24 (2) of the Act states that the right of a Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord does not arrange an inspection or complete the condition inspection report and give the Tenant a copy of it in accordance with the Regulations.

I find that the Landlord failed to arrange a move in inspection with the Tenant and has therefore extinguished his right to claim against the security deposit for damage. While the Landlord has extinguished the right to claim against the deposit for damage; the Landlord still has the right to seek monetary compensation due to damage or unpaid rent.

The Landlord applied for dispute resolution on July 4, 2017, which was within 15 days of the Tenant moving out and providing a written forwarding address. As such, the doubling of the security deposit provision of section 38 of the Act does not apply.

I find that the Tenant is entitled to the return of the security deposit in the amount of \$675.00. However; the deposit will be used to set off any successful monetary claim for unpaid rent awarded to the Landlord.

July 2017 Rent

The Residential Tenancy Branch Policy Guideline #30 Fixed Term Tenancies provides:

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. During the fixed term a tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement.

The Residential Tenancy Branch Policy Guideline # Unconscionable and Material Terms states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

The Residential Tenancy Branch Policy Guideline #3 Claims For Rent and Damages for Loss of Rent states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

I find that the Tenant moved out of the rental unit prior to the end of the fixed term tenancy and did not mitigate against any loss of rent by providing timely notice to the Landlord that he was moving out.

Pursuant to section 44 of the Act, the tenancy ended on June 25, 2017, when the Tenant vacated the rental unit. I find that the Tenant did not end the tenancy for cause in accordance with the provisions for ending a tenancy due to a breach of a material term of the tenancy. The Tenant did not provide a letter to the Landlord that there was a problem that was a breach of a material term and give the Landlord an opportunity to correct the reported issue.

Since I find that the Tenant chose to end the tenancy, the Landlord is not responsible for the Tenant's moving costs; rent; or the mail forwarding costs. I find that the Landlord did not breach the Act with respect to the Tenant's privacy. The Tenants request for compensation for these items are dismissed.

While tenancy ended on June 25, 2017, the Tenant was still responsible to pay the rent until the end of the fixed term tenancy, or until the Landlord found a new Tenant.

I find that the Landlord attempted to minimize the loss, by advertising the rental unit. In the circumstances, I find it reasonable to grant the Landlord compensation for a loss of rent for July 2017. I grant the Landlord compensation in the amount of \$1,350.00.

Lease Breaking Fee

The Residential Tenancy Policy Guideline #4 Liquidated Damages is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

The Landlords request for one month's compensation due to the Tenant breaking the lease is dismissed. The Landlord submitted that the lease breaking fee was a penalty in the amount of one month's rent to protect him against a loss of rent. I find that the Landlord did not intend the fee to be a genuine pre-estimate of the costs associated with re-renting the property. I find the fee to be penalty. The Landlord has a statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. A Landlord cannot recover a loss of rent unless the Landlord suffers a loss of rent.

The Landlord's tenancy agreement addendum regarding the lease break fee is unenforceable.

Damage

The Landlord's claim for compensation due to damage in the rental unit is dismissed. The Tenant submitted that the rental unit was left clean and undamaged. The Landlord failed to conduct a move in inspection and complete a condition inspection report to show the condition and state of repair of the rental unit at the start of the tenancy. In addition, the Landlord failed to break down the particulars of his claim and provide receipts for costs.

Insurance

The Tenants request for the Landlord to pay for two months of renters insurance is dismissed. I find that rental insurance was a term of the tenancy agreement. The Tenant chose to move out of the rental unit.

Utility Costs

I find that the parties reached an agreement for the Landlord to receive compensation towards additional utility costs in exchange for the right to have the Tenants parents stay in the rental unit for a short period of time. The parties disagree on how long the Tenants parents lived in the unit. There was no evidence presented that the Landlord agreed to refund the money if the Tenants parents not stay for the amount of time agreed upon. The Tenants request for the Landlord to return the \$200.00 for utilities is dismissed.

TV Deposit

The Landlord acknowledged that he is holding a \$100.00 deposit for the television cable box.

Carpet Cleaning

I award the Landlord \$150.00 for the cost to clean the carpets. The Landlord provided the better evidence that the Tenant failed to properly clean the carpets at the end of the tenancy. The Tenant acknowledged that he did not shampoo the carpets.

Monetary Awards

The Tenant is awarded \$675.00 for the return of the security deposit and \$100.00 for the tv deposit.

The Landlord has established a monetary claim of \$1,350.00 for a loss of rent and \$150.00 for carpet cleaning costs.

As to the recovery of the filing fees the parties paid for the Applications for dispute resolution, I find both parties had some successful with their applications, and therefore I do not award compensation for the filing fees.

After applying the amount of \$775.00 that the Landlord is holding towards the Landlord's claim of \$1,500.00, I grant the Landlord a monetary order in the amount of

\$725.00. This order must be served on the Tenant and may be enforced in Provincial Court.

Conclusion

The Tenant failed to end the tenancy in accordance with the *Act* and tenancy agreement. I find that the Tenant owes the Landlord \$1,350.00 for the loss of July 2017, rent, and \$150.00 for carpet cleaning costs.

The Landlord extinguished his right to apply for the security deposit by failing to perform a move in inspection and complete a condition inspection report.

The Tenant is awarded the return of the security deposit and tv deposit in the amount of \$775.00.

After setting off the claims, the Landlord is granted a monetary order in the amount of \$725.00.

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 03, 2018

Residential Tenancy Branch