



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNSD FF

Landlord: MNDC MND MNSD MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on July 16, 2018. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord attended the hearing with his agent (the previous owner) E.H. (collectively referred to as the “Landlord”). One of the Tenants, C.L., attended the hearing (the Tenant). The Landlord acknowledged receipt of the Tenant’s application package and evidence. The Tenant stated that she received the Landlord’s initial application package and evidence sometime in May 2018. The Landlord also sent the Tenant a second evidence package by registered mail on July 6, 2018. The Tenant stated that she got this package on July 11, 2018. However, as discussed during the hearing, this evidence was served late, and will not be considered.

Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the applicant not less than 7 days before the hearing, which would be July 9th, 2018, at the latest. Since the evidence was served late, I will not consider the Landlord’s late documentary evidence in this hearing.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to 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 submitted in accordance with the rules of

procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to the return of the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy began on July 1, 2016, and ended in November of 2017. The Tenant stated that she gave the Landlord written notice via email that she would be ending the tenancy. The Tenant sent this email on October 15, 2017, and stated she should be moving out as of November 15, 2017.

Both parties also agree that monthly rent was due on the first of the month and was set at \$1,200.00. Both parties also agree that the Landlord still holds a security deposit in the amount of \$600.00. Both parties agree that there was no condition inspection report completed and nothing was documented at the start of the tenancy. Both parties also agree that there was no condition inspection report done at the end of the tenancy. The parties disagree with respect to the condition of the rental unit. The Landlord has provided some photos taken at the end of the tenancy.

The Landlord's agent, E.H., was the previous owner of the house and entered into the tenancy agreement with the Tenants when they first moved in. He confirmed that no condition report was done. E.H. stated that he sold the house sometime in December of 2016, and remained living in the house upstairs up until the summer of 2017. E.H. stated that he was the onsite caretaker and agent for the Landlord until he moved out.

Tenant's Application

The Tenant stated she is looking for the return of her security deposit. The Tenant stated that she provided her forwarding address by way of an email to the Landlord. The Landlord acknowledged getting the Tenant's written notice and forwarding address on October 15, 2017. The Tenant indicated that email was a method of communication between the parties that was used on several occasions.

The Landlord made an application against the security deposit on May 8, 2018.

Landlord's Application

Unpaid Rent

The Landlord is applying to recover unpaid rent in the amount of \$900.00 for the month of November 2017. The Tenant acknowledged that she only paid \$300.00 in rent for this month. The Tenant also acknowledged that she owed rent until the end of November 2017, and still owed the Landlord \$900.00 for the remainder of the month.

Damage and compensation

The Landlords' application indicates that they are seeking:

- \$1,500.00 for damage to the property. The Landlord stated that this is comprised of the following:
 - Laminate flooring – the Landlord stated that the Tenant damaged the laminate flooring and parts of it needed replacing. The Tenant denies that this damage was caused by her and said there is no proof she caused the damage. The Landlord wants \$651.00 for this as per the estimate.
 - Blinds – The Landlord stated that the Tenant damaged the blinds and this will cost \$368.00 to replace. The Tenant denies breaking the blinds and

stated that there is no proof it was her who damaged the blind because there is no condition inspection report.

- Sewer blockage – The Landlord stated that there was a plug in the sewer pump caused by the Tenant putting laundry down the toilet, which subsequently blocked the sewage pump. The Landlord provided photos of the blockage, which shows laundry items plus other debris. The Landlord stated that this cost \$210.00 to repair, as per the invoice.
 - Rekeying of the locks – the Landlord stated that the keys were never returned to him at the end of the tenancy. The Tenant stated that she returned the keys when she met with the Landlord on November 15, 2017, the day she moved out of the rental unit. The Landlord stated that it cost \$105.00 to have the lock rekeyed, as per the invoice.
- \$200.00 for the time it took him to fix the unit after the Tenants moved out. The Landlords stated it took a while to deal with all the issues.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The applicant must prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Tenants' Application

The Tenants are seeking the return of the security deposit. I find as follows:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the testimony confirmed the Landlord was in receipt of the Tenant's forwarding address by email on October 15, 2017. The evidence indicates that the

Landlord and Tenant had previously exchanged emails leading up to the end of the tenancy. I find the parties established communication via email and the Landlord received the Tenant's forwarding address in writing on October 15, 2017, the day the Landlord acknowledged getting this information via email. The Tenants gave one month written notice on October 15, 2017, and moved out on November 15, 2017. The Tenant stated that she returned the keys on November 15, 2017, the day she met up with the Landlord's agent, although the Landlord disagrees that he got the keys back. I find the tenancy ended on November 15, 2017, the day the Tenants vacated the rental unit.

The Landlord had 15 days after the end of the tenancy to either repay the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord did neither and did not file an application for dispute resolution until May 8, 2018, which is well beyond the time allowable under the Act. Accordingly, I find the Tenants are entitled to recover double the amount of the security deposit held by the Landlord ($2 \times \$600.00 = \$1,200.00$) pursuant to section 38(6) of the Act, subject to any set off as explained below.

Landlord's Application

The Landlord is seeking to recover lost rent for November 2017, the period of time that the unit was vacant. I turn to section 45 of the Act:

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.

Although I have previously found that the tenancy ended on November 15, 2017, the day the Tenants moved out, I find they are obligated to pay rent for the whole month of November 2017, since they were not lawfully entitled to end the tenancy until the end of November (the day before the day rent is due) pursuant to section 45 of the Act. I also find it important to note section 53 of the Act, which states that a written notice with incorrect effective dates is automatically changed to comply with the Act. I find the corrected effective date of the Tenant's Notice is November 30, 2017.

The consistent evidence before me indicates the Tenants paid \$300.00 in rent for November 2017, which I find leaves a balance owing of \$900.00 for this month. I find the Landlord is entitled to recover this amount.

Next, I turn to the Landlords' claim for monetary compensation for damage and loss under the Act. The Landlord is looking for \$651.00 for laminate flooring and \$368.00 for replacement of the blinds which he says was damaged by the Tenants. I note the Tenants deny doing any of this damage. I also note the Landlords did not do a condition inspection report nor did they properly document the condition of the rental unit at the start of the tenancy. I do not find the Landlords have sufficiently established that the Tenants damaged the unit, as they have failed to sufficiently document the move-in condition of the rental unit. I dismiss the Landlords' claim for laminate flooring and blinds.

With respect to the sewer blockage that occurred, I note that the sewer pump that was blocked/plugged only services the Tenants' rental unit. As such, the other part of the house could not have caused the blockage, and the blockage was unlikely to have been caused by previous tenants, since the sewage was operational for the beginning of the tenancy. I also note that, as per the photo, there was fabric and materials which should not have been flushed down the toilet. The sewer appeared to have been functioning for several months before it plugged which indicates it was likely caused or contributed to by the Tenants. I find it more likely than not that the Tenants contributed to the plugged sewer and should be responsible for the \$210.00 fee to fix it. I award the Landlord \$210.00 for this item.

With respect to the Landlords' claim for rekeying of the locks, I note that the parties disagree with respect to whether or not the keys were returned. The Tenant stated she returned the key on November 15, 2017, but the Landlords said they never got the keys back. I further note that there was no condition inspection report done, which is normally where the return of the keys would be documented. I find that without further evidence to support this part of the claim, the Landlord has not sufficiently demonstrated his loss. As such, I dismiss this portion of the Landlords claim.

Lastly, I turn to the Landlords request to be compensated \$200.00 for his time and trouble. The Landlord stated it took a lot of his time to sort all of these issues out. However, I find the Landlord's testimony and evidence on this matter is vague and I do not find it is sufficiently clear why the Tenants should be responsible for this amount. It is also not clear how much time the Landlords spent, nor is it sufficiently clear what they

spent this time doing, such that I could find the Tenants are responsible for compensating them. I dismiss this portion of the Landlords claim.

In summary, I issue the monetary order as follows:

Tenants' application entitles them to:

- \$1,200.00 for double the security deposit

Landlord's application entitles them to:

- \$210.00 for sewer repair
- \$900.00 for unpaid rent for November 2017
- Subtotal: \$1,110.00

After offsetting these two amounts, I find the Tenant is entitled to a monetary order in the amount of \$90.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since both parties were partially successful in this hearing, I decline to award either party with recover of the filing fee.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$90.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenant 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: July 17, 2018

Residential Tenancy Branch