



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNSD, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order against the tenant for damage to the rental unit; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit and pet damage 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.

The hearing was held over two dates and an Interim Decision was issued on May 17, 2018. The Interim Decision should be read in conjunction with this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from tenant in the amounts claimed unpaid and loss of rent and damage to the rental unit?
2. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit?

Background and Evidence

The parties executed a written tenancy agreement for a tenancy that started on May 1, 2017. The tenant paid a security deposit of \$1,600.00 and a pet damage deposit of \$1,600.00. The tenant was required to pay rent of \$3,200.00 on the first day of every month.

The term and the length of tenancy, as provided in the tenancy agreement does not comply with the Act as the terms are contradictory in that the tenancy appears to be a month-to-month but with an end date. Below, I have reproduced the relevant section of the tenancy agreement:

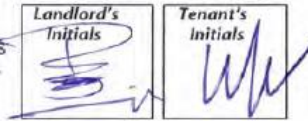
Length of tenancy: (please check a or b or c and provide additional information as needed)
 This tenancy is:

☒ a) on a month-to-month basis

☐ b) for a fixed length of time: 10 MONTHS ending on 28 FEBRUARY 2018
length of time day month year

At the end of this fixed length of time: (for option b, you must check either i or ii below)

☒ i) the landlord and tenant may agree to enter into a new tenancy agreement
 • If the landlord and tenant do not enter into a new tenancy agreement, the tenancy continues on a month-to-month basis on the same terms unless the tenant gives legal written notice to end the tenancy.

☒ ii) the tenancy ends and **the tenant must move out of the residential unit**
 • If you choose this option, both the landlord and tenant must initial in the boxes to the right 
 The tenant **must** move out on or before the last day of the tenancy.

☐ c) other periodic tenancy as indicated below:
☐ weekly ☐ bi-weekly ☐ other:

Both parties provided consistent testimony that the section of the tenancy agreement reproduced above were intended to reflect that tenant could end the tenancy by giving one month of notice but that the tenancy was to end no later than February 28, 2018.

It was undisputed that the tenant did not pay rent that was due on September 1, 2017 because he put a stop-payment on the September 2017 rent cheque and on September 2, 2017 the tenant sent a text message to the landlord indicating he was ending the tenancy effective September 30, 2017. The tenant vacated the rental unit earlier than that and returned possession of the rental unit to the landlord on September 17, 2017.

The landlord seeks to hold the tenant responsible for unpaid rent of \$3,200.00 for September 2017 because the tenant put a stop payment on the rent cheque. The tenant acknowledged he is liable to pay for September 2017 rent and authorized the landlord to retain his security deposit and pet damage deposit in satisfaction of the unpaid rent.

The landlord also seeks to recover loss of rent for the months of October 2017 through December 2017 in the sum of \$9,600.00 plus the estimated cost to repair damage caused by the tenant's son during the tenancy in the amount of \$11,445.00.

The landlord submitted that the tenant did not give one full month of notice to end tenancy as required, plus the contractor who inspected the damage caused by the tenant's son during the tenancy estimated that the repairs would take until December 2017 to complete.

It was undisputed that during the tenancy the tenant's son damaged the rental unit including soiling the carpeting, creating holes in the walls, pulling insulation out of the walls, breaking electrical fixtures and the bannister. The tenant explained that this son suffers from mental illness including psychosis.

The landlord claimed to have had a prospective tenant set to rent the unit and would have rented the unit until the end of the fixed term had the rental unit not been damaged. The tenant doubted landlord was going to re-rent the unit because the rental unit was slated for demolition and redevelopment as indicated by the big sign posted in the front yard, and the tenant claims the landlord had no intention to repair the rental unit. The tenant submitted the house was in very rough shape, especially the carpets, at the start of the tenancy. The tenant doubted that the landlord had a prospective tenant lined up to rent the house for a few months at over \$3,000.00 per month. The landlord was of the position the house was suitable for occupation at the start of the subject tenancy and could have been re-rented had it not been damaged by the tenant's son.

Considering I was only provided an estimate for the repair work, and several months had passed since this application was made, I made enquiries with the landlord as to whether the damage caused by the tenant's son during the tenancy was ever repaired. At that point the landlord explained that no repair work had started before the rental unit was vandalized after the tenancy ended and the landlord also acknowledged that he did not pay anything to the contractor who provided the estimate.

The landlord testified that the rental unit was vandalized on or about September 22, 2017 and again on or about October 20, 2017. The landlord testified that the vandalism of October 20, 2017 included cut water lines which filled the house with water and after the house was vandalized on October 20, 2017 the city ordered the landlord to demolish the rental unit. The landlord testified that he started the demolition process started in March 2018 and was finished in April 2018.

As for the vandalism that occurred after the tenancy ended, the landlord of the position the tenant's son must have done it because there was no forced entry of the outer door of the rental unit but the locked interior door was broken down. The landlord stated the tenant had a key for the outer door but not the interior door that was broken down. Although the tenant had returned the keys to the landlord on September 17, 2017 the landlord stated the tenant could have had additional keys cut. The landlord stated the police were called to investigate the vandalism but no arrests have been made. The police had attempted to talk to the tenant's son about the vandalism but they were unable to locate him. The landlord indicated he is very dissatisfied with the police investigation and has launched a complaint against the police. The landlord acknowledged that he did not carry any insurance on the house.

The tenant denied any involvement in the vandalism after the tenancy ended but acknowledged the police did attempt to contact his son at one point.

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.

Pursuant to section 44(1)(d) of the Act, a tenancy ends when a tenant vacates or abandons the rental unit. In the case before me, I find the tenancy ended on September 17, 2017 when the tenant vacated the rental unit and returned possession to the landlord.

The tenant did not dispute that he owes the landlord rent for September 2017 because he occupied the rental unit in September 2017 and he put a stop payment on the September 2017 rent cheque. Accordingly, I award the landlord unpaid rent for September 2017 in the amount of \$3,200.00.

The landlord also seeks to hold the tenant responsible for loss of rent for the three months after September 2017 which I consider below.

The tenancy agreement indicates that the tenancy was on a month-to-month basis (i.e.: periodic tenancy) and a fixed term. The parties were in agreement that the tenant may end the tenancy by giving one month of notice pursuant to their tenancy agreement. Accordingly, I turn to the notice requirements for ending a periodic tenancy. Section 45(1) of the Act provides that:

- 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.

Pursuant to section 45(1) of the Act, and considering the tenant was obligated to pay rent on the first day of the month, the tenant would have to give written notice to the landlord on or before August 31, 2017 in order to end the tenancy effective September 30, 2017. The tenant gave a text message to the landlord on September 2, 2017. Accordingly, I find the tenant's notice was insufficient to bring the tenancy to an end on September 30, 2017.

Considering the tenant gave insufficient notice to end the tenancy for September 30, 2017 and the tenant acknowledged that his son had caused damage to the rental unit during the tenancy, I accept that it was unlikely the landlord could have re-rented the unit for October 2017 due to the tenant's breach of the Act. Therefore, I hold the tenant liable to compensate the landlord for loss of rent for October 2017.

In awarding the landlord loss of rent for October 2017, I limit the landlord's award to the days up to and including October 20, 2017. According to the landlord, on or about October 20, 2017, the rental unit was vandalized so significantly that the City ordered the house demolished. I interpret that to mean the rental unit was no longer suitable for occupation and I am of the view that at that point the loss of rent is attributable to the criminal actions of someone after the tenancy ended. The perpetrator of that crime would be subject to the criminal justice system and the landlord may seek restitution there and/or Small Claims court. After the tenancy ended and the tenant returned possession to the landlord on September 17, 2017 it was upon the landlord to sufficiently secure the property and obtain adequate insurance. Having heard the property had been vandalized on or about September 20, 2017 I would expect that a reasonably prudent person would have taken additional steps to protect and insure the property if, as the landlord claims, the house still had value and potential to be re-rented. Therefore, I dismiss the landlord's request to hold the tenant responsible to compensate the landlord for loss of rent after October 20, 2017.

I also dismiss the landlord's request for the tenant to pay for damage to the rental unit. Although the tenant acknowledged his son damaged the rental unit during the tenancy, the landlord acknowledged that he had not expended any money to make repair the damage. Therefore, I am of the view that the landlord's losses due to the tenant's son's actions during the tenancy have been captured in awarding the landlord loss of rent up to October 20, 2017.

Considering the above, I award the landlord loss of rent calculated as follows:
 $\$3,200 \times 20/31 \text{ days} = \$2,064.52$.

As the landlord's claims had some merit, and I award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In keeping with all of my findings and awards above, I provide the landlord a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent – September 2017	\$3,200.00
Loss of rent – October 1 – 20, 2017	2,064.52
Filing fee	100.00
Less: security and pet damage deposits	<u>(3,200.00)</u>
Monetary Order	\$2,164.52

Conclusion

The landlord has been authorized to retain the tenant's security deposit and pet damage deposit and the landlord is provided a Monetary Order for the balance of \$2,164.52 to serve and enforce upon the tenant. The balance of the landlord's claims have been dismissed without leave.

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 30, 2018

Residential Tenancy Branch