



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TENANT: RPP, FF

LANDLORD: MNDC, MND, MNR, MNSD, FF

Introduction

Tenant:

1. Is the Tenant entitled to the return of personal property?

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is there a loss or damage to the Landlord under the Act, regulations or tenancy agreement?
4. Is the Landlord entitled to compensation for a loss or damage and if so how much?
5. Is there unpaid rent or utilities and if so how much?
6. Is the Landlord entitled to compensation for unpaid rent and if so how much?
7. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on April 1, 2017 as verbal month to month tenancy. Rent was \$850.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$425.00 which was transferred from a previous tenancy in a different rental unit. The Landlord and Tenant both agreed that there was no move in or move out condition inspection reports completed.

Tenant's application for the return of personal property.

The Tenant said the Landlord issued a 10 Day Notice to End Tenancy for Unpaid rent dated July 3, 2018. The Tenant continued to say she did not dispute the Notice to End Tenancy and she moved out of the unit on July 9, 2018. Following that the Tenant came back to the rental unit to pick up other belongings that were in the barn and yard. The Tenant said the Landlord said she was holding the belongings until the Tenant paid her for money owed to the Landlord. The Tenant said she did not know what she owed the Landlord for and the Landlord did not say. The Tenant said that because she was evicted she thought that the payment of \$425.00 she made July 2, 2018 for July, 2018 rent covered what she owed for rent. Further the Tenant said she left the unit only partially cleaned because of the short time she had to move out and she did not damage the rental unit. The Tenant said the Landlord would not return her property and she didn't think she owed the Landlord any money. The Tenant called the police and the police said it was a Residential Tenancy Branch issue.

As a result the Tenant said she made an application to recover her belongings.

The Landlord said she made a phone call to the Residential Tenancy Branch and she understood that she could hold the Tenant's belongings until the rent and compensation for damage and cleaning was paid. The Landlord said that now she understands that this was not correct and the Tenant has the right to collect her belongings.

The parties discussed when an appropriate time would be for the Tenant to come to pick up her belongings. The Parties agreed the Tenant would meet the Landlord where the Tenant's belongings are stored at 5:00 p.m. on Thursday, September 13, 2018. It was agreed the Tenant has the right of entry between 5:00 p.m. and 9:00 p.m. on September 13, 2018 to collect her belongings.

Landlord's application for compensation for unpaid rent, loss or damage to the rental unit and to retain the Tenant's security deposit.

The Landlord said that the Tenant did not pay the July, 2018 rent on time, so she issued a 10 Day Notice to End Tenancy for Unpaid Rent dated July 3, 2018, by personal deliver on July 3, 2018. The Landlord continued to say the Tenant moved out of the unit on July 9, 2018 and then came back on July 13, 2018 to collect some belongings that the Landlord had stored in the barn. The Landlord said she told the Tenant she was holding the belongings until the Tenant paid the Landlord what she owed her.

The Landlord then made an application for compensation from the Tenant for \$425.00 of unpaid rent for July, 2018. As well the Landlord applied for \$1,585.78 for cleaning, light bulb replacements and horse boarding. In addition the Landlord applied for \$450.00 for damages to the drywall, linoleum flooring and for damage to a door in the unit. The Landlord's total monetary claim is \$2,460.78.

The Landlord said she is requesting to retain the Tenant's security deposit of \$425.00 and to recover the filing fee of \$100.00 from the Tenant.

The Tenant said there was no condition inspection reports completed on move in or move out and she believes the damage to the property was there at the beginning of the tenancy. The Tenant said that with no condition inspection reports the Landlord can not prove the damage was caused by the Tenant. Further the Tenant said the Landlord did not submit any paid receives to prove that the any work for cleaning or repairs was actually done. The Tenant said the Landlord's claims for damages are not proven.

The Landlord agreed there were no condition inspection reports completed and that the cleaning was actually done by the Landlord and her daughter. Therefore there are no paid receipts for the cleaning and repair work. The Landlord said they spent about 6 hours cleaning and she believes cleaning companies charge about \$25.00 per hour.

The Landlord said she understands her damage claims are not supported by evidence and therefore will not be successful.

The Tenant continued to say that because she was evicted she should not have to pay the rent of \$425.00 for the second half of July, 2018.

The Landlord said they accepted \$425.00 from the Tenant for rent on July 2, 2018, but the Tenant did not pay the balance owing of \$425.00. Consequently the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated July 3, 2018. The Landlord said the Tenant still owes this unpaid rent.

Neither party had any additional comments for closing statements.

Analysis

With regard to the Tenant's application to recover personal property. Both parties agreed that the Tenant can recover her belongings between 5:00 p.m. and 9:00 p.m. on Thursday September 13, 2018. To support this agreement I grant the Tenant an Order of Entry for that time period to recover her belongings.

Sections 24 and 36 of the Act says if a landlord does not complete a move in and move out condition inspection reports the landlord's right to claim against the tenant's security or pet deposit for damages is extinguished. Further if a move in condition inspection report is not done then the Landlord can not establish a base line for the condition of the unit to measure any damage. Consequently if condition inspection reports are not completed the Landlord can not prove the extent or if any damage happened. Therefore, I dismiss the Landlord's damage claim for \$450.00 without leave to reapply.

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With regard to the Landlord's claims for damage or loss the Landlord has not provided evidence to support an actual loss exists as no paid receipts for work were submitted As well, claims for horse boarding or livestock feeding are a separate contracts which are not under the jurisdiction of the Residential Tenancy Act. Consequently I dismiss without leave to reapply the Landlord's claim for \$1,585.78 due to lack of evidence and lack of jurisdiction.

With that said I do accept both parties testimony that the unit was only partially cleaned when the Tenant vacated it. As a result I accept the time the Landlord and her daughter spent cleaning the unit. I award the Landlord 6 hours of labor at \$25.00 per hour in the amount of \$150.00.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant said she paid \$425.00 of rent on July 2, 2018 which the Landlord accepted. The tenancy then ended because the Tenant did not pay the balance of rent due. This is the reason the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent on July 3, 2018. I find the Tenant does not have the right to with hold part or all of the rent. Consequently I award the Landlord \$425.00 as the unpaid balance of the rent payment for July, 2018.

I order the Landlord to retain the Tenant's security deposit as full satisfaction of the unpaid rent for July, 2018 in the amount of \$425.00.

As the Tenant has been successful in her matter and the Landlord has been partially successful in her application, I order that the parties' filing fees of \$100.00 each are off set against each other with a nil balance being owed to either party.

The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 425.00
	Cleaning award	\$ 150.00
	Subtotal:	\$ 575.00
Less:	Security Deposit	\$ 425.00
	Subtotal:	\$ 425.00
	Balance Owing	\$ 150.00

Conclusion

An Order of Entry has been issued to the Tenant to recover her belongings.

A monetary order has been issued to the Landlord for \$150.00.

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: September 11, 2018

Residential Tenancy Branch