



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Landlord AG (the landlord) confirmed that they received a copy of the tenant's dispute resolution hearing package handed to a representative of the landlord at their office well in advance of this hearing, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received a copy of the landlord's written and photographic evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*. The tenant did not submit any written evidence to support this claim.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and other money owed by the landlord arising out of this tenancy?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on March 1, 2015. After the initial one year term expired the tenancy continued as a month-to-month tenancy. The parties agreed that by the end of this tenancy, monthly rent was set at \$1,669.00, payable in advance on the first of each month. The landlord continues to hold an

\$805.00 security deposit, an \$805.00 pet damage deposit and a \$195.00 key fob deposit, all paid when this tenancy began.

The tenant's application for a monetary award of \$7,045.00 was not accompanied by any Monetary Order Worksheet or breakdown of this claim. The tenant did not provide any written evidence to support this claim, submitted in response to attempts by the landlord's collection agency to obtain a monetary award for damage that occurred during the course of this tenancy. The sole reference to why the tenant believed that they were entitled to this monetary award was described as follows in the Details of the Dispute in the tenant's application:

I was given eviction notice from the property with the move out date of March 31st 2018. I fully moved out before March 1st and was still charged rent for the full month of March. Since March 1st I have been a tenant at my current address (xxx). Upon end of tenancy I was not given a walkthrough of the unit. I was charged outstanding amounts for extremely minor repairs and parts. I was forced to yelled at to sign and was told that would be the end.

The tenant confirmed that they received the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) posted on the tenant's door on February 2, 2018. This 1 Month Notice required the tenant to vacate the rental unit by March 31, 2018. The tenant submitted written evidence that they vacated the rental unit by March 1, 2018, and as such the landlord was responsible for returning the tenant's monthly rent for March 2018 to the tenant. At the hearing, the tenant gave undisputed sworn testimony that they did not issue any formal notice to end this tenancy early to the landlord, although they did send the landlord a text message stating their intent to end this tenancy by way of a text message sometime in early February 2018, after having received the landlord's 1 Month Notice.

The landlord provided written evidence that the landlord was unaware that the tenant had vacated the rental unit until March 12, 2018. The landlord noted that they were aware that the tenant had been in the process of removing belongings from the rental unit, but that the tenant did not provide the proper notification that that they were vacating the rental unit prior to the March 31, 2018 effective date of the landlord's 1 Month Notice. The landlord submitted extensive photographic and written evidence to support the landlord's assertion that repairs were required after the tenant vacated the rental unit and that the premises were not fit for rental to another prospective tenant until May 1, 2018, and certainly not during the remainder of March 2018. At the hearing, the landlord testified that the repairs to the rental unit were not completed until

April 2018, and the first showing of the repaired rental unit occurred on April 20, 2018. The landlord testified that the premises were rented to a new tenant who took possession as of May 1, 2018.

Although the landlord obtained the tenant's signature on a Security Deposit Statement on the joint move-out condition inspection report authorizing the landlord to retain the tenant's deposits as a partial payment for repairs to the rental unit, the landlord testified that they had not submitted any formal application to the Residential Tenancy Branch for authorization to retain those deposits or to obtain a monetary award for damage arising out of this tenancy. The landlord did not dispute the tenant's assertion that the landlord had forwarded their request for reimbursement for repairs to a collection agency for satisfaction of the landlord's claim for compensation from the tenant.

At the hearing, the landlord testified that they received the tenant's forwarding address in writing when the tenant returned the keys and signed the joint move-in condition inspection report on March 12, 2018. The landlord's building manager did not dispute the tenant's claim that they did not conduct a joint move-out condition inspection at the time of the tenant's surrender of the keys to the landlord on March 12, 2018. The tenant did not dispute the building manager's testimony that the landlord considered the joint move-out condition inspection as having been conducted during the course of a March 1, 2018 condition inspection undertaken by the building manager with the tenant in attendance. It was during the course of the March 1, 2018 inspection that the building manager took the extensive photographs of the condition of the rental unit at the end of this tenancy, many of which were entered into evidence by the landlord.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the tenant is entitled to a monetary award for losses and other money owed by the landlord as a result of this tenancy.

Section 26(1) of the *Act* establishes that “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.”

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for March 2018, the tenant would have needed to provide their notice to end this tenancy before February 1, 2018. Section 52 of the *Act* requires that a tenant provide this notice in writing.

As this tenancy was scheduled to end on the March 31, 2018 effective date identified on the 1 Month Notice, I find that whether or not the tenant stopped residing at the rental unit prior to March 1, 2018 has no bearing on the tenant's responsibility for rent that became due on March 1, 2018. With no adequate notice that they were leaving the rental unit before March 1, 2018 having been provided by the tenant prior to February 1, 2018, I find that the tenant was responsible for paying monthly rent for March 2018. I also find that landlord was in no position to re-rent the premises for March 2018. There is also photographic and written evidence from the landlord supported by the landlord's sworn testimony that the premises required repairs that could not have made the rental unit available for rental for any part of March 2018. For these reasons, I dismiss the tenant's application to recover rent the tenant paid the landlord for the month of March 2018, without leave to reapply.

The tenant produced no written or photographic evidence to substantiate the remainder of the tenant's claim, which the tenant confirmed was a request that an offsetting order be issued against the landlord for repairs that the landlord has claimed entitlement to receive. Whether or not the landlord has obtained a signed statement from the tenant in which the tenant has agreed to compensate the landlord for repairs, there is no evidence to demonstrate that the landlord has obtained an order from an arbitrator appointed pursuant to the *Act* to either retain the tenant's deposits or to obtain reimbursement for repairs from the tenant. Thus, any request from a collection agency to obtain reimbursement from the tenant is premature. I dismiss the tenant's application for a monetary award for recovery of losses that the tenant has not yet legally sustained.

As I noted at the hearing, In order to obtain any form of monetary award, the landlord is required to initiate an application for dispute resolution pursuant to the *Act*.

Conclusion

I dismiss the tenant's application without leave to reapply.

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 04, 2019

Residential Tenancy Branch