



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

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 to recover unpaid rent; to keep the security deposit; and to recover the cost of the filing fee.

The Tenant filed an Application requesting money owed or compensation for damage or loss under the Act, Regulation, or tenancy Agreement; for the return of the security deposit and to recover the cost of the filing fee.

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. All participants in the hearing 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.

Preliminary and Procedural Matters

The Landlord testified that she received a copy of the Tenant's documentary evidence. The Tenant testified that he received a copy of the Landlord's documentary evidence in April 2018; however, there were no photographs in the package.

In reply, the Landlord testified that she sent the Tenant the exact same documents that were provided to the Residential Tenancy Branch. The Landlord provided 11 photographs showing the condition of the rental unit at the end of the tenancy.

Based on the evidence before me, I find that it is more likely than not that the Landlord served the Tenant a copy of the photographs along with the Notice of Dispute Resolution proceeding documents. The Landlords photographs showing the condition of the rental unit are admitted and will be considered.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to keep the security deposit?
- Is the Tenant entitled to compensation?
- Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The Parties testified that the tenancy began on November 1, 2016, as a one year fixed term tenancy which was renewed for an additional year. Rent in the amount of \$2,450.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,225.00. The Tenant also paid the Landlord a cleaning deposit of \$450.00. The Landlord is holding both deposits. The Landlord provided a copy of the tenancy agreement. The monthly rent increased to \$2,540.00 on December 1, 2017.

The Landlord and Tenant testified that the Tenant moved out of the rental unit on April 15, 2018.

Landlord's Application

Unpaid Rent

The Landlord is seeking compensation to recover a loss of rent. The Landlord testified that starting in January 2018, the Tenant refused to pay the rent owing under the tenancy agreement. The Landlord testified that he never received the rent for the following months:

January 2018	\$2,540.00
February 2018	\$2,540.00

March 2018	\$2,540.00
April 2018 (1 -15)	\$1,270.00

The Landlord testified that the Tenant withheld the rent due because the Landlord did not replace the flooring. The Landlord testified that there was no legal order in place that gave the Tenant authority to withhold the rent.

The Landlord testified that in January 2018, he issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a hearing was scheduled for April 3, 2018. The parties attended the hearing. The Arbitrator granted the Tenant an order of possession for the rental unit effective from April 3, 2018, to April 15, 2018, and granted the Landlord an Order of Possession for the rental unit effective April 15, 2018. The Landlord's and Tenant's monetary claims were dismissed at that time with leave to reapply.

The Landlord testified that the Tenant sublet the rental unit without getting permission from the Landlord. The Landlord testified that on March 1, 2018, he discovered someone living in the unit who informed the Landlord that he was a Tenant. The Landlord testified that this unauthorized person informed him that he pays rent to the Tenant.

The Landlord testified that the Landlord changed the locks to the rental unit on March 1, 2018. The Landlord testified that the Tenant was given access to the rental unit on April 3, 2018.

In reply, the Tenant testified that there was a water leak in the rental unit and he asked the Landlord in December 2017, to fix the leak. When the Landlord did not respond to the satisfaction of the Tenant, the Tenant decided to withhold payment of the rent. The Tenant confirmed that he did not pay the rent owing from January 2018, until April 15, 2018.

The Tenant testified that he had a temporary roommate for less than one month. The Tenant testified that the Landlord locked him out of the rental unit on March 1, 2018 until April 3, 2018.

Keys

The Landlord is seeking compensation for the replacement cost of keys. The Landlord testified that the Tenant was issued key fobs for entry into the building and keys for the unit door. The Landlord testified that two keys and one fob were not returned at the end of the tenancy. The Landlord provided a document dated November 1, 2016, where the Tenant acknowledged receiving three key fobs and three unit keys.

In reply, the Tenant testified that he returned the unit key and fob to the Landlord at the end of the tenancy. He testified that he gave a set of keys to the Landlord's agent Ms. A.L. on April 15, 2018. He testified that the other set of keys were left in the rental unit. He testified that the Landlord changed the locks.

Cleaning Fees \$450.00

The Landlord testified that the Tenant left the rental unit messy at the end of the tenancy. The Landlord testified that the bathroom and kitchen were left dirty. The Landlord testified that tape was left on the windows and there was glue on the ceiling where the Tenant secured a type of divider to make the room into two rooms.

The Landlord testified that they hired a company to come clean the rental unit. The Landlord provided photographs of the rental unit and an invoice dated April 18, 2018, for the cost of the cleaning the kitchen/ bathroom, and windows.

In reply, the Tenant testified that he cleaned the rental unit at the end of the tenancy.

Tenants Application

The Tenant is seeking compensation from the Landlord for being illegally locked out of the rental unit. The Tenant is seeking compensation for the following:

Hydro Cost (March/ April)	\$60.00
March 2018, Rent	\$2,540.00
Two Months' Rent for Sale of Unit	\$5,080.00
Inconvenience	\$1,000.00
Delay in Repairs	\$2,000.00
Travel Expenses	\$600.00

Hydro

The Tenant testified that he was charged \$60.00 for hydro costs during the period of time that the Landlord illegally locked him out of the rental unit. The Tenant is seeking \$60.00 for March 2018.

In reply, the Landlord testified that they changed the lock to the unit door on March 2, 2018; however, the Landlord submitted that the Tenant was not in town at that time.

March 2018, Rent

The Tenant testified that the Landlord illegally locked him out of the rental unit for the month of March 2018. The Tenant submitted that he did not pay the rent for March 2018; however, he is requesting that he is credited \$2,540.00 for March 2018 rent.

The Landlord testified that the Tenant did not pay the rent for March 2018.

Compensation for the Sale of the Rental Unit

The Tenant testified that the Landlord sold the rental unit and the Landlord never gave him proper notice to end the tenancy. The Tenant is seeking \$5,080.00.

The Landlord testified that the rental unit was sold in July 2018. The Landlord submitted that the tenancy was ended on April 15, 2018 by an Arbitrator. The Landlord testified that the Tenant is not entitled to compensation due to the sale of the rental unit.

Inconvenience

The Tenant testified that he was inconvenienced by the Landlord when he was illegally locked out of the rental unit. He testified that he had no shower facilities and no cooking facilities. He submitted that he returned from China on March 12, 2018. He submitted that he was staying with a friend from March 12 until April 3, 2018.

In reply, the Landlord submitted that the Tenant was not in the country on March 1, 2018 so they changed the locks. The Landlord testified that she had to protect the owner's property. She submitted that there was an unauthorized person living in the unit.

Repair Delay

The Tenant is seeking compensation for the Landlords delay in having the floor repaired. The Tenant testified that there was a water leak from a pipe behind a wall that affected the floor. The Tenant testified that in December 2017, he requested that the floor be repaired. The Tenant submitted that he detected a mold smell from the floor. The Tenant provided a copy of an email dated January 19, 2018, where he asks the Landlord to fix the floor as soon as possible and asks for the date the restoration will take place. The Landlord responded by saying they won't know the date for restoration until the following week. The Tenant provided photographs of a damaged bathroom wall and damaged flooring.

The Tenant is seeking compensation in the amount of \$2,000.00.

In reply, the Landlord testified that the Tenant reported a water leak in December 2017. The Landlord testified that the building strata fixed the leak. The Landlord testified that in January 2018, the Landlord arranged to have a flooring company enter the unit and repair the floor; however, the Tenant would not allow access. The Landlord submitted that the Tenant asked for time to have other occupants of the unit leave before the repairs were made.

Travel Expenses

The Tenant is seeking to recover his travel costs that he incurred when the locks to the unit were changed and he had to return home early from another country. The Tenant testified that he had unauthorized occupants that needed to get into the unit. The Tenant testified that he had to change his flight and stay in a hotel. The Tenant provided some travel receipts. The Tenant testified that he had to travel to Shanghai in order to send emails and deal with the tenancy issues. The Tenant provided a hotel reservation March 3, 2018; flight itiniery information; and a hotel receipt written in Chinese with date of September 27, 2018.

In reply, the Landlord testified that the Tenant sent the Landlord an email saying that he would be back at the end of the month and that the unit will be vacant by March 1, 2018. The Landlord submitted that the Tenant already planned to return from abroad and is not entitled to compensation.

Security Deposit

The Tenant testified that he provided his forwarding address to the Landlord on April 15, 2018.

The Landlord testified that the Tenant would not sign a condition inspection report at the end of the tenancy.

The Landlord applied for dispute resolution and made a claim against the security deposit on April 18, 2018.

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 party making a claim for compensation against another party bears the burden of proof. To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

Section 26 of the Act provides that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

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

Landlord's Application

Unpaid Rent

I find that the Tenant is required under the tenancy agreement to pay the Landlord monthly rent in the amount of \$2,540.00. I find that the Tenant failed to pay the rent due under the tenancy agreement for the month of January 2018, up until April 15, 2018 which is the date an Arbitrator ended the tenancy.

I find that the Tenant did not have a legal right under the Act to withhold payment of the rent. I find that the Tenant owes the Landlord the amount of \$8,890.00 in unpaid rent for the above mentioned months.

Keys

The Landlord provided evidence that the Tenant was provided with three fobs and three suite keys at the start of the tenancy. While the Tenant testified that he returned one set off keys and left the other set in the unit, I note that the Tenant was either subletting the unit or having an unauthorized roommate living in the unit. I find that it is more likely than not that the Tenant provided a set of entrance and suite keys to other occupant(s).

I find that the Tenant is responsible for the cost of replacing a set of keys. I grant the Landlord the amount of \$114.00.

Cleaning Costs

I find that the rental unit required cleaning at the end of the tenancy. The Landlords photographic evidence shows that the rental unit was left dirty. I find that the Tenant is responsible to pay for the Landlords costs to have the unit cleaned.

I award the Landlord the amount of \$450.00 for cleaning costs.

Tenant's Application

Hydro Cost

I find that the Landlord illegally locked the Tenant out of the rental unit from March 1, 2018, until April 3, 2018.

While the Landlord submits that the Tenant was not in town for some of that time, I find that the Landlord prevented the Tenant or anyone permitted by the Tenant to use the rental unit during that time. Accordingly, I find that the Landlord is responsible to pay the hydro cost for the month that the Tenant had no access.

The Tenant did not provide a hydro invoice to prove the value of his loss. I find it reasonable to award the Tenant a nominal amount of compensation because the loss has not been proven but the Landlord is at fault.

I award the Tenant the amount of \$40.00 for the cost of hydro.

March 2018, Rent

I find that the Landlord locked the Tenant out of the rental unit for the month of March 2018. Since the Tenant did not have access to the rental unit, I find that the Tenant is not obligated to pay the rent owing under the tenancy agreement for the month of March 2018.

I find that the Tenant is not responsible to pay the rent of \$2,540.00 that was due to be paid for March 2018 rent.

Two Months' Rent for Sale of Unit

I find that the Tenant is not entitled to compensation due to the sale of the Landlord's rental property. The Landlord never issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property, and the Landlord was not obligated to do so. A 2 Month Notice to end tenancy is only required in circumstances where a sale agreement is reached and the purchaser wishes to have vacant occupancy of the rental unit. I find that the tenancy was ordered to end in April 2018, and the Landlord sold the unit in July 2018.

The Tenants claim for compensation is dismissed.

Inconvenience

I find that the Tenant was illegally locked out of the rental unit for March 2018. I found that the Tenant is not responsible to pay the rent for March 2018. The Tenant wants compensation for the inconvenience of being locked out. I find that the Tenant was out of the country for half of March 2018, and during this period he was not inconvenienced.

by not having access to the unit. I find that upon the Tenants return in mid-March, he was inconvenience by not being able to access his rental unit. I accept that the Tenant had to find another place to stay and eat. I find that the Landlord is responsible for any costs that the Tenant incurred as a result of being illegally locked out.

The Tenant did not provide any testimony or receipts to prove the value of any loss. He testified that he stayed with a friend. I find it reasonable to award the Tenant a nominal amount of compensation because the value of the loss has not been proven but the Landlord is at fault.

I award the Tenant a nominal amount of \$300.00 for the inconvenience of being illegally locked out of the rental unit.

Delay in Repairs

The Tenants request for compensation due to a delay in having the floor repaired is dismissed. I find that it is reasonable to accept that it takes time for a Landlord to deal with insurance and contractors to arrange for repairs. The Tenant could have applied for dispute resolution seeking a repair order prior to seeking compensation for loss. Instead, the Tenant improperly withheld payment of the rent. The Tenant did not provide any medical evidence that his health suffered due to moisture or the alleged presence of mold.

Travel Expenses

The Tenants request for compensation for travel expenses is dismissed. The Tenant provided insufficient evidence that the costs for changes to his travel plans are the responsibility of the Landlord. The Tenants flight itiniery evidence issued February 10, 2018, indicates the Landlord was returning on March 4, 2018. The Tenant provided other flight evidence that indicates he was returning on March 9, 2018, and March 15, 2018. The Tenants hotel reservation was made on March 2, 2018. I do not accept the Tenants suggestion that the Landlord is responsible for the Tenants costs to travel in order to respond to the tenancy issues using email.

Security Deposit

The Landlord applied for dispute resolution on April 18, 2018, which was within 15 days of the Tenant moving vacating the rental unit. As such, the security deposit does not double as a penalty.

The security deposit of \$1,225.00 and the cleaning deposit of \$450.00 will be applied to any successful claims awarded to the Landlord.

Monetary Awards

The Landlord is awarded \$9,455.00 for unpaid rent; key costs, and cleaning costs.

The Tenant is awarded \$2,880.00 for credit towards March 2018, rent, hydro costs, and inconvenience.

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

After subtracting the Tenants award of \$2,880.00 from the Landlord's award of \$9,455.00, I find that the Tenant owes the Landlord the balance of \$6,575.00.

After applying the security deposit of \$1,225.00 and the cleaning deposit of \$450.00 towards the balance of \$6,575.00 owing to the Landlord, I grant the Landlord a monetary order in the amount of \$4,900.00. The Tenant owes the Landlord \$4,900.00. For enforcement, this order must be served on the Tenant and may be enforced in Provincial Court.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and did not have a legal right under the Act to withhold payment of the rent. The Tenant owes the Landlord compensation of \$8,890.00 for unpaid rent. The Landlord's claims for cleaning costs and key costs are successful.

The Landlord breached the Act by preventing the Tenant from accessing the rental unit by illegally changing the locks to the rental unit. The Landlord owes the Tenant compensation for locking the Tenant out of the rental unit. The Tenant's claims for hydro, rent, and inconvenience were partially successful.

After subtracting the Tenants award of \$2,880.00 from the Landlord's award of \$9,455.00, I find that the Tenant owes the Landlord the balance of \$6,575.00.

After applying the security deposit of \$1,225.00 and the cleaning deposit of \$450.00 towards the balance of \$6,575.00 owing to the Landlord, I grant the Landlord a monetary order in the amount of \$4,900.00.

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 3, 2019

Residential Tenancy Branch