



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF / MNDC MNSD

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for loss and/or damage pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenants:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The parties confirmed service of the respective applications and evidence on file.

The tenant withdrew her claim relating to compensation for loss during the hearing.

Issues

Is the landlord entitled to a monetary award for compensation for loss and/or damage?
Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?
Are the tenants entitled to a return of all or a portion of the security deposit?

Background & Evidence

The rental unit is the main floor of a duplex. The tenancy began on December 9, 2017 with a monthly rent of \$1900.00 payable on the 1st day of each month. The tenants paid a security deposit of \$9500.00 and a pet deposit of \$550.00 which the landlord continues to hold. On January 8, 2019 the tenant provided notice via text message that they would be ending the tenancy effective February 1, 2019. A move-in condition inspection was done on December 9, 2017. A move-out inspection was done on February 3, 2019. At the move-out inspection, the tenant was issued a cheque in the amount of \$1275.00 for return of the security and pet deposit. A stop payment was later put on this cheque by the landlord.

The landlord is claiming \$1900.00 as loss of rent for February 2019. The landlord testified the tenant did not vacate the unit until February 3, 2019 even though she was supposed to vacate by February 1, 2019. The landlord testified the tenant did not provide the required 30 days' notice to end the tenancy. The landlord testified that she had another tenant from the duplex property scheduled to move-in on February 1, 2019; however due to the extensive damages the tenant did not move in. The landlord testified the unit is still vacant.

With respect to the landlord's claim for damages, the landlord submitted a monetary order worksheet detailing various damage claims totalling just over \$1600.00. The landlord basically read through the list of items on the monetary order worksheet. The landlord did not direct me to any specific pictures or receipts in support of each of the individual claims even after being provided with instruction that it was up to her to present the claim in detail and refer me to any evidence which has been submitted to both prove that the damage was caused by the tenants and to quantify the loss suffered as a result. The landlord was cautioned that it was not sufficient to simply state that evidence has been submitted but rather to direct the Arbitrator to the evidence so the Arbitrator is not left to piece the claim together.

The landlord further testified that the final walk through did not actually happen as the tenant became aggressive and threatening. The landlord testified that the tenant snatched the cheque out of her hand. This is why the landlord subsequently put a stop payment on the cheque. The landlord testified that she had written the cheque out prior to coming out to the property because the tenant was demanding it.

The tenant testified that she had vacated the unit and all her belongings with the exception of one mattress by February 1, 2019. The tenant testified that to her knowledge the unit was re-rented soon after February 1, 2019. The tenant submits that based on the receipts for alleged repair work submitted by the landlord it appears the repairs have been done so she does not understand why the landlord is alleging it is still sitting empty as a result of the alleged damages.

The tenant submits that they had three separate final walk through inspections on February 1st, 2nd and 3rd respectively. The tenant testified that the landlord wanted her to do additional cleaning which is why there were three inspections. The tenant submits that the parties conversed for days by text message with respect to return of the deposit and on the third inspection they finally came to an agreement on the amount. The landlord subsequently issued a cheque for the agreed upon amount. The tenant adamantly denies snatching the cheque from the landlord. With the exception of a broken window and a missing dishwasher knob the tenant denies all other damage claims put forward by the landlord. The tenant argues that all other damages claimed by the landlord were either pre-existing or normal wear and tear and that none of these other items were noted during the walk through.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 45(1) of the Act sets out that:

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 after the landlord receives the notice, and
- (b) is before the day in the month...that rent is payable under the tenancy agreement.

The tenant provided a notice to the landlord on January 8, 2019 to end the tenancy effective February 1, 2019. The earliest possible effective date for the tenant's notice to end this periodic tenancy pursuant to section 45 of the Act was February 28, 2019. The

tenant did not provide sufficient notice to end the tenancy as required under the Act. However, as per section 7 of the Act, the landlord is required to take reasonable steps to mitigate the loss. The landlord's own testimony was that she had another tenant lined up for February 1, 2019. The landlord testified that this other tenant did not end up moving in because of all the damage in the rental unit. The landlord has not provided any evidence of any steps taken to advertise the unit to secure other suitable tenants soon after learning the unit was not going to be re-rented February 1, 2019. Further based on the evidence submitted, I do not accept the landlord's argument that the damages were so extensive that the rental unit has remained vacant for the past 4 months. The landlord's claim for loss of rent is therefore dismissed as the landlord has failed to take steps to mitigate the loss by advertising the unit for rent and completing any necessary repairs within a reasonable time period.

With respect to the landlord's claim for various damages to the rental unit, on a balance of probabilities I accept the version of events provided by the tenant over that of the landlord. I do not accept that the tenant snatched the security deposit cheque from the landlord as alleged by the landlord as clearly the tenant could not have forced the landlord to also write the cheque. I find that the parties completed three separate walk through inspections and arrived at a mutual agreement as to the amount of the damages and the amount to be returned to the tenants on the final inspection. I find it very peculiar that the landlord went from issuing a cheque by which she only retained \$225.00 of the \$1500.00 deposit to subsequently discovering damages amounting to just over \$1600.00 and also claiming the damages were so extensive that they still have not been completed over a four month period. Additionally, the move-in and move-out inspection reports were both very lacking in any detail. The move-in report was identical for every item and was all checked off as being in "good" condition with no further details. The move-out report only contained a comment that a door was broken in the entry and that a dishwasher knob was broken. This was more in line with the damage agreed to by the tenant. The report was checked off indicating the tenant agrees with the condition as reflected in the report upon move-out even though the report was not signed by the tenant on move-out. For the above reasons, I find that the landlord has failed to establish that the tenant has caused damages other than as reflected in the report and agreed to by the tenant. I find the parties arrived at a mutual agreement at the time of the move-out inspection that the landlord would retain \$225.00 from the security and pet deposit.

The landlord is awarded **\$225.00** which is the amount of damages originally agreed to by the parties.

As the landlord was for the most part not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application from the tenants.

The landlord continues to hold a security and pet deposit in the amount of \$1500.00. The landlord is permitted to retain \$225.00 from this security deposit in full satisfaction of the monetary award and the balance of \$1275.00 is to be returned to the tenants forthwith.

The tenants are granted a Monetary Order in the amount of \$1275.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1275.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: May 30, 2019

Residential Tenancy Branch