



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

On January 8, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; to keep the security deposit, and to recover the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. The Tenant was assisted by a legal advocate. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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 provided documentary evidence to the Residential Tenancy Branch (“RTB”) however, he testified that he did not provide a copy of his documentary evidence to the Tenant.

The RTB Rules of Procedure require an applicant to provide a copy of their evidence to a respondent at least 14 days prior to a hearing.

A fundamental principle of natural justice and fairness is that a party to a proceeding has the right to receive disclosure of evidence that will be considered against them and

have an opportunity to respond. Since the Landlord failed to disclose his evidence, it would be unfair to the Tenant for me to consider the Landlord's evidence.

The Landlord's documentary evidence is not accepted and has not been considered in making this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Can the Landlord keep the security deposit towards his claims?
- Is the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord purchased the rental property in September 2019 and inherited the existing tenancy agreement.

The Landlord and Tenant testified that the tenancy began on August 2018 on a month to month basis. Rent in the amount of \$850.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$425.00.

The parties disagreed on the amount that was paid to the Landlord for a pet damage deposit. The Landlord testified that the Tenant paid \$350.00; however, the Tenant testified that he paid the original Landlord \$425.00. The Tenant testified that he initially paid \$350.00 however, he paid an additional \$75.00 deposit when he introduced another dog into the rental unit.

December 2019 and January 2020 Rent

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the months of December 2019 and January 2020.

The Landlord testified that the Tenant did not pay his rent in advance. He testified that the Tenant paid his monthly rent at the end of each month after occupying the unit for the month.

The Landlord testified that the Tenant moved out of the rental unit without giving him proper written notice to end the tenancy. The Landlord testified that he was not able to complete a move out condition inspection report because the Tenant left without giving notice.

The Landlord testified that after he cleaned the rental unit, he was not able to rent the unit out for the month of January 2020. The Landlord testified that he re-rented the unit to a new Tenant beginning in February 2020.

In reply, the Tenant testified that the Landlord had asked him to move out, so he understood that he did not have to give any written notice that he was ending the tenancy. The Tenant testified that he sent the Landlord a text message. The Tenant provided a copy of the text messages.

The Tenant testified that he paid the rent for December 2019. The Tenant testified that he paid Mr. W.R. an agent of the Landlord. The Tenant provided receipts for payment of November 2019 rent in the amount of \$850.00 and December 2019, rent in the amount of \$850.00. Both receipts are signed by Mr. W.R. on behalf of the Landlord.

The Landlord provided testimony confirming that Mr. W.R. occasionally collected the rent on his behalf.

Damage

The Landlord testified that the Tenant left the rental unit unclean when he moved out. The Landlord testified that he had to clean the fridge and stove and bedrooms. The Landlord testified that he hired a company who charged him \$350.00 to clean the rental unit. The Landlord testified that the other \$75.00 was for the Landlords time spent cleaning the unit.

In reply, the Tenant testified that he cleaned the rental unit before he moved out. The Tenant provided photographs of the rental unit that are dated.

In reply, the Landlord suggested that the Tenant's photographs could have been photographs that were taken at the start of the tenancy.

Security Deposit

The Landlord is seeking to keep the security deposit and pet damage deposit in partial satisfaction of his claims for unpaid rent.

The Landlord testified that the Tenant never gave him his forwarding address in writing. The Landlord testified that the community is small, and he located the Tenant through an acquaintance.

The Landlord testified that there was no written agreement permitting him to keep the security deposit or pet damage deposit. The Landlord testified that he returned the amount of \$360.00 to the Tenant in the first week of January 2020.

In reply, the Tenant provided testimony confirming that the Landlord returned \$360.00 to him.

The Tenant provided a copy of an email dated April 23, 2020 from the previous Landlord that states that the Tenant paid a pet deposit for one dog, and the Landlord did not know the Tenant had three, so they came to agreement that if he paid more rent and paid more pet damage deposit he could keep two of his dogs and remain renting. The Tenant submitted that his rent increased from \$700.00 to \$850.00 per month.

The Tenant provided a copy of a text message exchange between himself and the Landlord. The Landlord was looking to draw up a new tenancy agreement and the Tenant replied that the agreement is on the papers he provided the Landlord. The Landlord responds that the agreement was between the Tenant and the previous Landlord, "not you and me." A dispute ensued and the Landlord states, "ok then move out" and the Tenant responded he will leave at the Landlord's request.

Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

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 14 (2) of the Act provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the Landlord and Tenant agree to the amendment.

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

December 2019 and January 2020 Rent

I find that the Tenant did not give the proper notice required under section 45 of the Act to end the tenancy. While I accept that the Landlord told the Tenant to move out, that suggestion, or direction, from the Landlord is not a legal notice to end the tenancy and the Tenant was not obligated to vacate the unit. The Tenant was required to provide proper notice to end the tenancy. Since the Tenant moved out of the rental unit on December 31, 2019, without proper notice, the earliest date the tenancy could legally end is January 30, 2020.

I accept the Landlord's testimony that he did not rent the unit out and receive rent for January 2020. I find that the Tenant is responsible to compensate the Landlord for the loss of rent incurred for January 2020. I award the Landlord the amount of \$850.00.

With respect to the claim for December 2019 rent, there is insufficient evidence from the Landlord to establish this claim. The Tenant provided the better evidence that the rent for December 2019 was paid to an agent of the Landlord. The Landlord's claim for December 2019 rent is dismissed without leave to reapply.

Damage

The Tenant testified that he cleaned the rental unit and he provided color photographs of the condition and state of repair of the rental unit. The Landlord's evidence was excluded from consideration, so there is no evidence from the Landlord in support of his testimony. I find that the Tenant has provided the better evidence that the rental unit was left reasonably clean.

The Landlord's claim for cleaning costs is dismissed without leave to reapply.

Security Deposit

The Landlord inherited the existing tenancy agreement when he purchased the rental property. The terms of the existing tenancy could be changed only if both the Landlord and Tenant agree to the amendment.

It appears to me that the Landlord believed the existing tenancy was between the Tenant and the previous Landlord. I find that the terms of the agreement, including the amounts the Tenant paid the original Landlord for a security deposit and pet damage deposit are the responsibility of the new Landlord. The Landlord was required to collect these deposits from the original Landlord.

I find that the Tenant paid the original Landlord a security deposit of \$425.00. With respect to a pet damage deposit, I find that the Tenant provided the stronger evidence that he initially paid the Landlord a pet damage deposit of \$350.00 and later paid the Landlord an additional amount for a total pet deposit of \$425.00. I note that based on that agreement, the Tenant also began paying additional monthly rent that the new Landlord was collecting.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful with the claim for a loss of rent, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$950.00 comprised of \$850.00 for January 2020 rent; and the \$100.00 fee paid by the Landlord for this hearing.

I find that the Landlord was holding a security deposit of \$425.00 and a pet damage deposit of \$425.00. The parties agreed that the Landlord returned \$360.00 to the Tenant in January 2020. I find that the Landlord is holding a balance of \$490.00 from the deposits.

I authorize the Landlord to keep the balance of the deposits in the amount of \$490.00 towards the \$850.00 award for January 2020 rent.

After setting off the security deposit of \$490.00 towards the total award of \$950.00, I find that the Landlord is entitled to a monetary order in the amount of \$460.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to give proper notice to end the tenancy and the Landlord suffered a loss of January 2020 rent.

The Landlord has established a monetary claim in the amount of \$950.00. I order that the Landlord can keep the security deposit and pet damage deposit in the amount of \$490.00 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order for the balance of \$460.00.

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: May 20, 2020

Residential Tenancy Branch