



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit based upon a fixed term in the tenancy agreement;
- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenants;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord, the tenants, and their assistant/parents attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to provide their affirmed testimony and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

At the time of the hearing, the tenancy had ended. I therefore amended the landlord's application in order to exclude his request for an order of possession of the rental unit.

In addition, the tenants denied receiving all the landlord's evidence, in particular the significant amount of digital evidence. The landlord said he sent the tenants his evidence by email; however, the tenants denied receiving all the evidence. The tenant submitted that they only received the landlord's application and monetary order worksheet to begin with. Then on May 25, 2020, they received copies of only 6-7 emails. I do not find the landlord submitted sufficient evidence that he provided the balance of his evidence to each tenant individually.

I note that a large portion of the landlord's evidence consisted of unnumbered and unnamed digital submissions. Also, the landlord's monetary claim listed in his application was not sufficiently particularized as that amount did not match the amount listed in the landlord's evidence.

For these reasons, I refuse the portion of the landlord's application seeking monetary compensation from the tenants, with the exception of the landlord's claim for unpaid rent, under authority of Section 59(5)(c) of the Act. The landlord failed to provide sufficient particulars of his claim for compensation, as is required by section 59(2)(b) of the Act.

Further, Rule 2.5 of the Residential Tenancy Branch Rules of Procedure (Rules) states that a detailed calculation of any monetary claim be submitted at the same time as the application for dispute resolution.

Both parties have the right to a fair hearing and the respondents are entitled to know the full particulars of the claim made against them at the time the applicant submits their application. Given the above, the landlord is granted liberty to reapply but is reminded to provide full particulars of his monetary claim.

Additionally, I make the landlord aware of other sections of the Rules.

Rule 3.10.1 requires as follows:

- A party submitting digital evidence must:
- include with the digital evidence:

- a description of the evidence;
- identification of photographs, such as a logical number system and description;
- a description of the contents of each digital file;
- a time code for the key point in each audio or video recording; and
- a statement as to the significance of each digital file.

Rule 3.10.5 requires the party submitting digital evidence to the other, must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

The hearing proceeded on the landlord's application for unpaid rent, without consideration of the landlord's documentary or digital evidence, as I do not find the landlord substantiated that his evidence, the bulk of which was not provided with his application, as required by the Rules, was properly served to the tenants.

Issue(s) to be Decided

Has the landlord established that he is entitled to receive monetary compensation from the tenants and to recovery of the filing fee?

Background and Evidence

The evidence showed that this tenancy began on or about September 2, 2019, and monthly rent was \$1,700. The written tenancy agreement shows the tenants paid a security deposit of \$850 on or about May 7, 2019.

The landlord's application shows he is holding the tenants' security deposit.

The written tenancy agreement shows that the tenancy was for a fixed term through April 30, 2020, and that the tenants were required to vacate the rental unit on that date. Additionally, the landlord submitted a copy of a Mutual Agreement to End the Tenancy, signed by the parties, showing an agreement to end the tenancy on April 30, 2020.

The evidence was that the rental unit was a fully-furnished condo.

The landlord's claim for unpaid rent is \$850. The landlord also seeks \$70 for returned cheque charges, as the rent cheque of \$850 was deposited twice and returned due to stopped payments.

Tenants' response –

Tenant OJ said that towards the end of March, when the Covid-19 pandemic had begun in full force, the tenants were concerned about the landlord entering the rental unit, due to safety concerns.

Although they relocated to their families' homes in late March, they assumed they would continue to have access to the rental unit. Because the landlord had entered the rental unit, they did not feel safe, according to the tenant.

Tenant KC said they assumed they would still have access to the rental unit and their access codes continued to work, which is how they were able to take photographs. The tenant submitted that the landlord had re-taken the rental unit in April, as they saw empty beer cans and personal cleaning products.

As the landlord had retaken the rental unit, they believed the tenancy was over, according to the tenants.

The tenants believed the matter of the rent cheque for \$850 would be dealt with at the hearing.

Landlord's rebuttal –

The landlord said the cleaning supplies must have been those of the cleaning staff.

Analysis

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, I find the landlord failed to provide sufficient evidence to support his claim for unpaid rent for April 2020.

While the landlord asserted the cleaning supplies belonged to the cleaning staff, I find it just as likely as not that the landlord had re-taken possession of the rental unit. Otherwise, the landlord would not have had his staff begin cleaning.

Likewise, I do not find it reasonable that the cleaning staff would have open beer cans while cleaning, which was not disputed by the landlord.

I was also persuaded by the fact the tenants still had working access codes, which led me to conclude that the landlord did not consider the tenancy over in April, yet, by his own admission, his cleaning staff had begun cleaning. I find the landlord's evidence to be inconsistent on this point, and therefore, not reliable.

Due to the landlord's inconsistent evidence and the disputed oral evidence, I find that on a balance of probabilities the landlord had re-taken possession of the rental unit in April 2020, effectively ending the tenancy.

As a result, I find the tenants were not responsible for the monthly rent for April 2020.

I therefore dismiss the landlord's claim for unpaid rent of \$850 for April and the returned cheque charges. I note the clause in the Appendix 1- Rental Conditions and Terms,

made a part of the written tenancy agreement allows for a charge of \$35 for a returned cheque. The Residential Tenancy Regulation allows a fee of not more than \$25. I also do not find authority for a landlord to charge \$2.00 per day for each day after the due date that the rent remains unpaid.

As I have dismissed this portion of the landlord's application, I decline to award him recovery of the filing fee.

As I have dismissed the landlord's this portion of the landlord's monetary claim against the tenants, if he has not already done so, I order the landlord to return the tenants' security deposit of \$850, immediately. Otherwise the landlord may be subject to the provisions of section 38(d) of the Act, which allows for doubling the tenants' security deposit under certain conditions.

Conclusion

The portion of the landlord's application seeking a monetary award for unpaid rent of \$850 and returned cheque charges of \$70 is dismissed, without leave to reapply.

The landlord's request to recover the filing fee has been dismissed.

The portion of the landlord's application seeking an order of possession of the rental unit was removed, as the tenancy had ended by the time of the hearing.

The balance of the landlord's application for monetary compensation not specifically addressed in this Decision was refused, pursuant to section 59 of the Act. The landlord is at liberty to re-apply for those claims.

The landlord has been ordered to return the tenants' security deposit of \$850, immediately.

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: June 25, 2020

Residential Tenancy Branch