



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary claim due to loss or damage suffered by a breach of the tenancy agreement, *Act* or regulations by the tenant. The landlord also seeks to retain the tenant's security deposit plus interest in partial satisfaction of this claim. Both parties appeared for the hearing and were provided the opportunity to present evidence and respond to the evidence of the other party.

Issues to be Determined

Has the landlord established a monetary claim due to damage or loss under the *Act* due to non-payment of rent and damage to the plumbing the of the rental unit?

Background and Evidence

This brief tenancy began on January 1, 2009 for the monthly rent of \$1,650.00 and a security deposit of \$1,000.00 paid on December 15, 2008. The tenant moved into the rental unit on January 5, 2009 and vacated the rental unit on January 25, 2009.

The disagreement between the parties revolved around the terms of occupancy. Specifically, the tenant was to be the sole occupant but it was agreed that he would have his children staying with him on a part time basis.

According to the landlord the tenant breached this agreement. She stated that the tenant had his ex-wife and children staying with him all the time plus an additional child. She also suspected that the tenant was running some form of daycare or childcare operation; however, she had no evidence to support this allegation.

The landlord stated that she went to discuss the situation with the tenant on January 15, 2009. During this discussion she made it clear to the tenant that the situation was not acceptable and that she expected him to vacate if he would not meet his obligations as agreed.

The landlord also presented verbal testimony that she suffered \$1,000.00 in damages having the plumbing in the rental unit repaired. She stated that the plumbing was clogged by tissue. The landlord did not provide any evidence to support her claim that she suffered any damage.

The tenant agrees that the landlord spoke to him regarding the number of occupants; however, it is his position that the landlord told him that he had to leave. The tenant stated that he had a witness who overheard this conversation. The tenant stated that he acted upon the landlord's statement that he had to leave and found a new residence and vacated this rental unit as of January 25, 2009.

The tenant denied any damage to the plumbing and also indicated that the landlord had not provided any evidence to support this allegation. The tenant also argued that the landlord did not have the right to retain his security deposit because she failed to conduct written move in condition inspection as required by the *Act*.

The tenant's witness was brought forward and provided affirmed evidence. I note that the tenant's witness was present while the tenant gave his evidence; therefore, I have weighed her statements in light that she presented her version on events after hearing the tenant's evidence. She stated that she was present when the landlord came to talk with the tenant. She indicated that she was in another room and that the landlord was not aware that she was there at that time.

The witness confirmed that the landlord indicated that the situation was not working and that the landlord believed that the tenant was not meeting the terms of the agreement. She stated that the landlord felt that he should leave but the witness did point out that the landlord said that she would give the tenant time to think about the situation and that the landlord would give the tenant notice in writing.

Analysis

I grant the landlord's application in part. I dismiss the landlord's claim for damage to the plumbing of the rental unit without leave to re-apply. The landlord has failed to prove that there was any damage by failing to conduct move in or move out condition inspections or by providing any evidence that work was actually completed to make repairs.

I do accept the landlord's claim for the loss rent for February 2009 in part. Section 45 of the *Act* requires that a tenant can only end a tenancy by providing one month's notice in writing. The tenant failed to do so.

I do not accept the tenant's argument that he was required to vacate. Although I accept that the landlord felt that the tenant had to leave because of the circumstances the tenant was not required to leave unless he accepted written notice from the landlord or received a Notice to End Tenancy for sufficient reasons under the *Act* as provided in section 44 of the *Act*.

In the circumstances before me the tenant made the choice to vacate the rental unit after the landlord discussed the issues with him. The tenant was not required to move as quickly as he did and was obligated to give proper notice. The tenant is solely liable for his own decision to vacate the rental unit early and is responsible for the landlord's loss.

However, the landlord is obligated to mitigate her damages as required by section 7 of the *Act*. The landlord did not provide any evidence that she took steps to re-rent the unit to reduce her potential loss. As a result of the landlord's failure make any attempt to mitigate her loss I find that the landlord is only entitled to a portion of the rent for February 2009 in the sum of \$950.00.

Section 24 of the *Act* states that a landlord extinguishes any right to retain a tenant's security deposit if the landlord fails to conduct a written move in condition inspection report with the tenant. However, section 72 of the *Act* provides that any monetary claim established by a landlord can be offset by the tenant's security deposit.

I find that the landlord has established a total monetary claim for the sum of **\$1,000.00** comprised of \$950.00 loss of rent for February 2009 plus the recovery of the \$50.00 filling fee paid for this application. I Order that the landlord may recover this monetary claim by retaining the tenant's security deposit of \$1,000.00.

Conclusion

The landlord's application has been granted in part and I have found that the landlord established a total monetary claim of \$1,000.00. This claim is recovered by the landlord retaining the tenant's security deposit pursuant to section 72 of the *Act*.

Dated April 16, 2009.

Dispute Resolution Officer