



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants requested monetary orders for compensation under the Act or tenancy agreement, for return of the security deposit, and to recover the filing fee for the Application.

The Landlord requested an order for monetary compensation under the Act or tenancy agreement, for damage to the rental unit, to keep all or part of the security deposit, and to recover the filing fee for the Application.

All parties appeared, gave 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 Issue:

Tenant RP claimed that he was not the tenant in this tenancy agreement, that his father, GP, was the Tenant, and that his name was misspelled and that the person named in the Landlord's Application, Tenant RP, does not exist. I note that there was one letter difference in Tenant RP's surname and his father's surname. As Tenant RP listed himself as one of four tenants in the Tenants' Application, I find he is a tenant and due to the confusion of the one letter difference in his and his father's surname, I allowed the hearing to continue. Further, the Tenant did not submit evidence to verify the difference in spelling of his surname versus his father, even though he said the same existed.

Issue(s) to be Decided

Are the Tenants entitled to the monetary compensation sought?

Is the Landlord entitled to the monetary compensation sought?

Background

The parties agree there is no written tenancy agreement or condition inspection report. I heard testimony that this tenancy started on or about the first day of April, 2010, on a month to month basis. Tenant RP, who supplied the Tenants' testimony, testified that the Tenants moved out on June 30, 2010, and the Landlord testified that the Tenants moved out on July 31, 2010. I heard testimony that the monthly rent was \$1,300.00 and a security deposit of \$650.00 was paid April 2, 2010.

The Tenants' Claim and Evidence

The Tenants' monetary claim is **\$25,000.00**, which includes **\$1,100.00** for July rent, **\$650.00** for the security deposit and **\$23,250.00** for disturbance, no peace and the apparent loss of quiet enjoyment, although it is stated as "quite" on the Application. In support of their claim, the Tenants submitted relevant documentary evidence including a handwritten rebuttal of the Landlord's Application, in large part denying Tenant RP was the tenant, a cancelled cheque to the Landlord for \$800.00 for July rent, a handwritten receipt on an envelope dated July 3, 2010, from the Landlord acknowledging receipt of a total of \$1,100.00 for July rent, and a Contract of Agreement from a moving company hired by the Tenants. I note the Agreement was executed on June 30, 2010, but that the date paid was listed as July 3, 2010.

In support of their claim, I heard testimony from the Tenant that the Tenants gave the Landlord a verbal notice that they were moving out on June 30, 2010, about a month before moving out. I heard testimony from the Tenant that even though they moved out on June 30, 2010, they left personal possessions in the rental unit, including \$4,000.00 worth of carpet.

Upon query, the Tenant testified that he did not give the Landlord a written forwarding address, but told the Landlord's family. The Tenant could not name a specific date, but testified that it was around July 2, 2010.

The Tenant testified that the Landlord had already rented out the rental unit by July 3, 2010, which they found out when the Tenants tried to collect their carpet. The Tenant testified that the Landlord had already changed the locks to the rental unit.

I heard testimony from the Tenant that the Landlord disturbed their peace by coming around the rental unit early every morning to cut the grass or do something else, which would cause them to lose sleep.

In response, the Landlord denied having the time to come around every morning as he works 6 days a week and spent the 7th day with his family and denied re-renting the rental unit in July.

The Landlord's Claim and Evidence

The Landlord's monetary claim is **\$3,623.00**, which includes **\$373.00** for unpaid rent for July, **\$1,300.00** for rent for August and damage in the amount of **\$1,950.00**. In support of his claim, the Landlord submitted documentary evidence including a 2 page Damage Report, with an itemized listing of alleged damages, a copy of a cheque from Tenant GP and photos of the rental unit, depicting alleged damage.

In support of his claim, I heard testimony from the Landlord the Tenants did not move out until July 31, 2010; therefore he is claiming for the balance of unpaid rent for July and lost rent for August as he was not given a two month notice of intent to vacate, which he claims the Tenants promised they would do. I heard testimony from the Landlord that the Tenants damaged the rental unit during the tenancy, which remained un-repaired at the end of the tenancy.

The Landlord acknowledged that there was no written tenancy agreement or move in or move out condition inspection.

Analysis

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

I find that the monthly rent was \$1,300.00 per month, that a security deposit of \$650.00 was paid at the start of the tenancy and that the Tenants paid \$1,100.00 for the July rent.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that most of the evidence consisted of disputed, verbal, testimony. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail.

Tenants' Application:

I find the Tenants failed to submit proof that they complied with Section 45 of the *Act* by giving the Landlord sufficient, written proof of their intent to end the tenancy. Further I find the Tenant gave contradictory testimony and evidence, testifying that the Tenants moved out on June 30, 2010, when the moving company receipt stated cash payment on July 3, 2010, and testifying that their belongings remained in the rental unit into July. Further I find that the Tenants' payment on July 3, 2010, of a large portion of the July

rent supports the Landlord's claim that the Tenants did not move out until sometime in July. Therefore I **dismiss** the Tenants' claim for **\$1,100.00** for July rent.

I find the Tenants failed to submit proof that the Landlord disturbed the Tenants' quiet enjoyment, such as dates, times, photos that the Landlord was even at the rental unit or independent verification. I find the Tenants' claim for loss of quiet enjoyment to be unsupported and vexatious and I **dismiss** their claim for **\$23,250.00**.

I find the Tenants paid \$650.00 for a security deposit, which has not been returned to them at the end of the tenancy. Therefore I **accept** their claim for **\$650.00**.

Landlord's Application:

Section 23 and 35 of the Act requires a Landlord to provide opportunities for a move in and move out condition inspection. With the Landlord acknowledging there was no move in or move out inspection report, I find the Landlord has not established the condition of the rental unit either before or after this tenancy and therefore I find that the Landlord has not proven a monetary claim for the alleged damages to the rental unit. Additionally, Section 24 and 36 of the Act extinguishes the right of the Landlord to claim against the deposit for damages should the Landlord fail to offer the opportunities for inspection. Therefore I **deny** the Landlord's claim for **\$1,950.00** for damage to the rental unit.

Section 45 (1) of the Act and the tenancy agreement states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives notice, and is the *day before the day in the month ... that rent is payable* under the tenancy agreement.

Therefore, I find that the Tenants submitted insufficient proof that they gave the Landlord timely, written notice to end the tenancy as of June 30, 2010. The Landlord has claimed the amount of \$373.00 for unpaid rent for July; however, the evidence supports that the Tenants paid \$1,100.00 for July and therefore I **allow** his Application in the amount of **\$200.00**.

I find the Landlord submitted insufficient evidence that he tried to rent the rental unit for the month of August 2010; therefore I find the Landlord did not mitigate his loss and I **deny** his claim for **\$1,300.00** for August rent.

I find that the Landlord has established a total monetary claim of **\$200.00** for the balance of the July 2010 rent and that the Tenants have established a claim for **\$650.00** for the return of their security deposit.

Pursuant to section 72(2) of the Act, I **order** that the Landlord withhold the amount of **\$200.00** from the security deposit of **\$650.00** in satisfaction of the claim. I further **direct** that the Landlord issue to the Tenants the remaining balance of **\$450.00** within one week of this Decision. I **grant** the Tenants an order under section 67 for the balance due of **\$450.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I will not grant either party recovery of the filing fee for their Application.

Conclusion

The Landlord is allowed to retain \$200.00 from the security deposit and is directed to remit the balance of \$450.00 within one week of the Decision.

The Tenant is granted a monetary order for **\$450.00**.

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: December 20, 2010.

Dispute Resolution Officer