Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

For the landlord MNR, MNDC, MNSD, FF
For the tenant MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord filed on November 15, 2010 and an application filed by the tenant on November 24, 2010. February 11, 2011. Both matters were set down for hearing for this date.

The landlord applies for;

1. A Monetary Order for unpaid rent for November 2010 - Section 67 - $1450
2. A Monetary Order for compensation for damage and loss – section 67 - $840
3. An Order to retain the security - Section 38 (- $725)
4. An Order to recover the filing fee for this application - Section 72 - $50

The tenant applies for:

1. A Monetary Order comprised of the return of their security deposit - Section 38 - $725

This tenancy has ended. The tenant is not disputing a Notice to End as stipulated. There are no amendments to either application.

Both parties participated in the hearing and provided sworn testimony. The applicant and respondent both forwarded evidence and witnesses and submissions prior to the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant evidence is as follows. There is no written tenancy agreement for this tenancy. The tenancy began on May 15, 2010 and ended October 27, 2010, subsequent to an oral notice to vacate by the tenant on, or about, October 11 - 18, 2010. Rent in the amount of $1450 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of $725 which the landlord still holds. At the end of the tenancy there was no move out inspection mutually conducted. The parties dispute each other's efforts to establish a mutual inspection of the rental unit. On November 11, 2010 the landlord was in possession of a letter from the tenant containing the tenant's written forwarding address for the return of the security deposit. The landlord was able to re-rent the rental unit for November 01, 2010.

The landlord claims rent for November 2010 in the amount of $1450, to which the landlord testified he determined he was entitled. The landlord is also claiming cleaning costs of $640 for which the landlord provided an invoice. The landlord is also claiming personal labour in the amount of $200 for some small repairs and removal of debris and refuse on the residential property left by the tenant.

The tenant testified they left a written note on the counter when they vacated on October 27, 2010, informing the landlord with their written forwarding address. The landlord testified that when they entered the unit on October 31, 2010 they did not find the written notice as the tenant purports.

The landlord testified that on October 31, 2010 he found the rental unit unreasonably unclean and hired their witness to clean the unit. The landlord did not complete a condition inspection report on their own when the tenant vacated, and I do not have benefit of such a report. The landlord provided photographs of the rental unit's purported condition. In part, the photographs depict the condition of the fireplace, kitchen stove, refrigerator (inside and behind) – all of which appear visibly dirty. The landlord and their witness testified that the refrigerator is on wheels and was movable. The tenant disputes that any portion of the rental unit was left unclean, except for the stovetop and stove oven – as depicted. The tenant also disputes that the outside residential property was left in the condition as depicted in the landlord's photographs showing, in part, a quantum of wooden pallets.

The tenant provided a witness: *Witness JL – affirmed*

The witness claims that she was at the residential property on October 25, 2010, at which time she assisted in cleaning the rental unit, including personally cleaning / vacuuming the fireplace once the tenant's 12 year old son removed all of the ashes. The witness testified the fireplace box was cleaned out. The witness viewed all of the landlord's photographs and testified that all of the photographs, in her determination, are "bogus", except for the condition of the stove.

The landlord provided a witness: *Witness TL – affirmed*

The witness is the landlord's cleaning contractor and previous agent. The witness testified the rental unit interior was "very messy", and that the refrigerator (on wheel), once moved, revealed debris, the inside of the refrigerator had food elements on the doors and shelves, the fireplace box was full of ashes, and the bathroom was dirty.

Analysis

On preponderance of the evidence and on the balance of probabilities I have reached a decision upon my findings herein.

In respect to the tenant's claim

I find it was incumbent upon the landlord to ensure the start of tenancy inspection at the outset of the tenancy, but they did not. The landlord did not present any evidence to conclude they acted in *good faith* to ensure a valid end of tenancy inspection. I also find the need for the tenant to attend to an end of tenancy inspection was not a matter unknown to the tenant and that the tenant did not sufficiently respond or advance to achieve the inspection. As a result, I find that neither party lived up to their respective obligations to, in *good faith*, accommodate the other to accomplish an end of tenancy inspection within the legislated provisions of the Act or Regulations. However, in the absence of the landlord offering the tenant a *valid* second and final opportunities (in writing) for an end of tenancy inspection as *prescribed* by the Act and Regulations, **I find** he tenant is entitled to the return of their security deposit.

Section 38 of the Residential Tenancy Act provides as follows:

Section 38(1)

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Further: 38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b)	must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find there is no conclusive evidence the landlord was provided a forwarding address prior to November 11, 2010. I find the landlord was in possession of the tenant's forwarding address on November 11, 2010. The landlord was obligated to comply with Subsection (1)(c) or (d) by November 26 2010 or be liable under Section 38(6)(b) for double the base amount of the security deposit. I find the landlord made application on November 15, 2010 for dispute resolution to make a claim against the security deposit. As a result, the tenant is not entitled to the doubling provisions of Section 38(6)(b).

In respect to the landlord's claim

If a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs (with some allowance for loss of rent or loss of occupation during the repair if applicable), or replacement (less depreciation / normal wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

In order to claim for compensation for damages or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and must satisfy each component of the test below:

1. Proof the damage or loss exists,

2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party in violation of the *Act* or agreement

3. Verification of the amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage – including factoring normal wear and tear into their claim.

Therefore, in this matter, the landlord bears the burden of establishing a claim on the balance of probabilities. The landlord must prove the existence of the damage or their loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide sufficient evidence that is credible, verifying the monetary amount of the damage or loss. Also, the claimant must show that reasonable steps were taken to

address the situation and to mitigate the damage or losses that were incurred. A Dispute Resolution Officer is then able to make a finding and determine any award.

It should be noted that the Act does not provide for an automatic penalty in favour of the landlord when a tenant does not give the landlord a proper notice to end the tenancy according to the Act. However, a landlord may apply for loss of revenue, if they can prove that the tenant's failure to provide proper notice results in the landlord encountering a loss of rental revenue. In this matter, I find that the landlord successfully mitigated their potential loss of rental revenue for November 2010 by finding a new tenant for November 01, 2010. As a result, the landlord is not entitled to loss of revenue for November 2010, and **I dismiss** this portion of their claim without leave to reapply.

On the preponderance of the evidence and on the balance of probabilities, I find that the tenant was required to clean the kitchen stove and the oven, and given the refrigerator was on wheels, the Residential Policy Guidelines prescribe that a tenant is required to clean under and behind the refrigerator. I prefer the landlord's evidence in respect to the condition of the rental unit after the tenant vacated. I find the rental unit was left sufficiently unclean that it required remediation by the landlord. I accept the landlord's evidence of the cost incurred to clean the unit in the amount of **$640** for labour and supplies.

I find that the landlord has not sufficiently articulated their claim for labour and repairs in the amount of $200. However, I accept the landlord's evidence sufficiently shows that they had to expend some labour to clean the outside of the residential property. I grant the landlord a set amount for this labour, of **$100.**

As the landlord was partially successful in their claims, I grant the landlord partial recovery of their filing fee in the amount of **$25**. As the landlord's entitlement exceeds the tenant's, their security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Cleaning	640.00
Labour	100.00
Filing fee - partial	25.00
LESS tenant's security deposit - no interest	*-725.00*
Landlord's monetary award	**40.00**

Conclusion

As result of all the above, **I order** the landlord to retain the security deposit and interest, herein set off; and, I **grant** the landlord an order under Section 67 of the Act for the

balance owed in the amount of **$40.** If necessary, this order may be filed in the Small Claims 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*.