



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make submissions and to respond to the submissions of the other party.

The landlord had named two co-tenants in making this application. Both named respondents appeared at the commencement of the hearing. The female respondent submitted that the landlord incorrectly identified her on the application and that she was not served with the landlord's application. The landlord confirmed he did not serve the female respondent and explained that he was uncertain of her last name but thought she and the male respondent were husband and wife so he used the male's last name in identifying the female respondent. The female respondent was excluded from the proceeding and the application amended. Having been satisfied the male respondent was sufficiently served with the landlord's application, this decision names the male respondent only.

The landlord submitted late evidence which has not been considered in making this decision. The tenant did not submit any documentary evidence. Accordingly, this decision was based upon verbal testimony only.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damages to the rental unit?
2. Has the landlord established an entitlement to compensation for unpaid rent?
3. Has the landlord established an entitlement to damage or loss under the Act, regulations or tenancy agreement?
4. Is the landlord authorized to retain the security deposit?

Background and Evidence

I heard the following undisputed testimony from the parties. The tenancy between the male respondent and the landlord commenced July 1, 2009 and the landlord was aware that the tenant was residing in the rental unit with his spouse and children. The tenant was required to pay rent of \$1,550.00 on the 1st day of every month under a verbal agreement. The tenant paid a security deposit in the amount of \$750.00 or \$775.00 at the beginning of the tenancy. The landlord did not prepare condition inspection reports.

In making this application the landlord claimed losses of \$4,162.50; however, during the hearing the landlord reduced the claim to \$2,350.00 comprised of the following amounts:

Unpaid rent – February 2011	\$ 1,550.00
Damage to the rental unit	750.00
Filing fee	<u>50.00</u>
Total	\$ 2,350.00

The landlord submitted that the tenant did not give sufficient notice to end tenancy. On January 25, 2011 the landlord received a message on his answering machine from the tenant's spouse that they were vacating the rental unit effective January 31, 2011.

The landlord also submitted that the tenant caused significant damage to the rental unit which resulted in four insurance claims; however, the landlord is seeking return of the security deposit in satisfaction of the damages. The landlord explained that in November 2010 the tenant's spouse told the landlord that she and the tenant broke up and that she was having difficulty paying the full rent. The landlord accepted \$1,012.50 in rent for November, December and January 2011 and applied the security deposit to the shortfall.

The tenant testified that he and his spouse broke up in May 2010 and he ceased living in the rental unit at that time but continued to pay the rent to the landlord until November 2010. The tenant acknowledged he did not inform the landlord of his departure or that he wanted to end the tenancy.

The tenant submitted that starting in November 2010 he and his spouse agreed that he would pay her support and she would be responsible for paying the rent. The tenant was of the position that a new tenancy formed with his spouse in November 2010. The tenant acknowledged he did not give the landlord notice to end tenancy.

The tenant testified that he and his spouse later reconciled and they moved out of the rental unit to new accommodation together on January 31, 2011. The tenant submitted that the landlord should have been aware that the tenancy was going to end because the tenant's new landlord called for a reference check at the end of December 2010.

The tenant denied causing damage to the rental unit and testified that the unit was in poor condition when his tenancy began. The tenant pointed to the fact there is no move-in inspection report showing the condition of the rental unit at the beginning of the tenancy.

The landlord responded to the tenant's assertions by stating that he considered the tenant and his spouse to be a couple and the tenancy still in effect. Nor did the landlord agree that a new tenancy formed with the tenant's spouse. Rather, the landlord claimed that he often dealt with the tenant's spouse for tenancy related matters. The landlord acknowledged a reference check was made for the tenant but the landlord was of the position a reference check does not necessarily mean the tenancy is going to end.

The landlord also stated that had the security deposit been applied to the last four of tenancy the landlord should have received \$1,212.50 in rent for February 2011.

Analysis

Based upon the verbal testimony presented to me for this hearing I make the following findings.

In the absence of inspection reports, photographs, or other evidence, showing the condition of the unit at the beginning and end of the tenancy I find the disputed verbal testimony is insufficient to conclude damage was caused during this tenancy. The landlord's claim for damages is dismissed.

Section 44 of the Act provides for ways a tenancy ends. A tenancy ends when one of the parties gives notice to end tenancy in accordance with the Act, or the tenant vacates or abandons the rental unit.

To vacate a unit means to leave it empty and devoid of contents. When a tenant leaves a rental unit but leaves possessions and occupants in the rental unit the tenancy is still in effect. Dealing with the tenant's spouse about rent payments for November through January is not sufficient to satisfy me that the tenant ended his tenancy and a new tenancy formed with the tenant's spouse, especially when I consider: the landlord was

accustomed to dealing with the tenant's spouse, on behalf of the tenant, and the landlord did not know the spouse's full name.

In order for a tenant to end a month-to-month tenancy and end his obligation to pay rent, the tenant must give the landlord one full month of written notice. This was never done by the tenant. Therefore, I find the tenancy ended January 31, 2011 when the unit was vacated and I find that insufficient notice was given to the landlord.

In light of the above, I hold the tenant responsible for the landlord's loss of rent for the month of February 2011. While the loss of rent is likely \$1,550.00 the landlord indicated he should have received \$1,212.50 for February during the hearing; therefore, I grant the landlord the lesser amount. I also award the filing fee to the landlord.

Since the security deposit has already been applied to rent owed for November 2010 through January 2011 with the landlord's consent I find there is no balance left in trust for the security deposit. Accordingly, I provide the landlord with a Monetary Order for the total of \$1,262.50 including the filing fee. The Monetary Order must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord was partially successful in this application and has been provided a Monetary Order in the amount of \$1,262.50 to serve upon the tenant.

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: July 08, 2011.

Residential Tenancy Branch