



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF, SS

Introduction

This was the reconvened hearing dealing with the landlord's Application for Dispute Resolution for a monetary order for money owed or compensation for damage or loss and for unpaid rent, authority to retain the tenant's security deposit, and to recover the filing fee. The landlord also requested to serve documents in a way different than required under the Residential Tenancy Act (the "Act"). This Decision should be read in conjunction with my Interim Decision of November 23, 2011, wherein the tenant's request for an adjournment was granted.

The landlord and tenant appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to respond each to 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.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit and to receive a monetary order for damages to the rental unit and lost revenue, pursuant to sections 38, 67, and 72 of the Act?

Background and Evidence

This one year, fixed term tenancy began on November 1, 2010, actually ended on or about April 30, 2011, when the tenant vacated the rental unit, monthly rent was \$1,800.00 and the tenant paid a security deposit of \$900.00 at the beginning of the tenancy.

The landlord requests a monetary order in the amount of \$7,856.20, for cleaning of \$431.20, wall painting for \$825.00, floor refinishing of \$2,000.00, garage floor cleaning and repainting for \$500.00, missing bedding and other articles for \$300.00, damaged dresser for \$100.00, loss of revenue for May and June 2011, for \$3,600.00, and filing fee of \$100.00. The landlord also seeks to retain the tenant's security deposit of \$900.00.

The landlord submitted that when the tenant began occupancy, the furnished rental unit was in good condition and that the tenant and his dog committed damage to the rental unit during the course of the tenancy. The landlord submitted that upon the tenant vacating the rental unit needed professional cleaning and repair, including refinishing the floor, and that certain items needed to be replaced.

The landlord submitted that during the course of the tenancy, the tenant's dog caused complaints from the neighbours, which were reported to the strata. The landlord contended that he was forced into giving the tenant a 30 day notice, on April 19, 2011, to get rid of the dog or find daytime arrangements or move out.

The landlord contended that the tenant left without notice at the end of April, and did not find out until May 2 that the tenant had vacated. The tenant did not leave a forwarding address, according to the landlord.

The landlord stated that he was entitled to monetary compensation for loss of revenue for May and June, as he could not get the rental unit move in ready before the end of June.

Upon query, the landlord stated that there was no move-in or move-out condition inspection report. The landlord contended however, that the photographs submitted into evidence were proof of the rental unit before and after the tenancy. The landlord also submitted into evidence invoices for repair and cleaning, a bank statement indicating payments to a flooring company and email communication between the parties.

Upon query, the landlord stated that he has not attempted to re-rent the rental unit as he did not want to rent it out again.

In response, the tenant submitted that the landlord knew he had dog when he moved in and that when he received an ultimatum from the landlord to get rid of his dog, he declined to remove a family member. The tenant denied there were any issues with his dog and contended that he was forced to move by the landlord.

The tenant submitted that the landlord never offered opportunities for a move-in or move-out inspection of the rental unit. The tenant denied damaging the rental unit in anyway, but admitted that the rental unit needed cleaning.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to

repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Section 23(3) of the Residential Tenancy Act (the "Act") requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) 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.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. A failure to provide the opportunities for inspection at the end of the tenancy results in the application of section 36(2); which extinguishes the right of a landlord to claim against the deposit for damages when the tenant was not provided the opportunities for inspection at the end of the tenancy.

In this case, the landlord applied to keep the security deposit in partial compensation of monetary claims for damage to the property as well as for lost revenue for May and June. As the landlord's claim was not only for damage to the property, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit.

However, in the absence of a condition inspection report, I find the landlord has not established upon a balance of probabilities to my satisfaction the condition of the rental unit either before the tenancy began or after this tenancy ended. I additionally do not find that the landlord has submitted insufficient evidence upon a balance of probabilities through his photographic evidence that the tenant damaged the rental unit. In reaching this conclusion, the landlord did not prove what date the photographs of the rental unit prior to the tenancy were taken and the photographs taken of the rental unit after the tenancy were not the same positioning.

I therefore find that the landlord has not met step 2 of his burden of proof and I **dismiss** his claim for floor refinishing, missing items, wall painting, garage floor cleaning and repainting and damage to the dresser. As a further point of clarification, I also find that the landlord failed to submit proof by way of a statement from a flooring company that the floors required refinishing.

Due to the tenant's confirmation that the rental unit needed cleaning after he vacated the rental unit, I **allow** the landlord's claim of **\$431.20** for professional cleaning.

As to the landlord's claim for loss of revenue, the landlord admitted that he has made no attempts to re-rent the rental unit. I therefore find that the landlord failed to take

reasonable measures to minimize his loss for those months, thereby failing to meet step 4 of his burden of proof. I therefore **dismiss** his claim for **\$3,600.00** for loss of revenue.

As I find merit to at least a portion of the landlord's application, I allow the landlord recovery of the filing fee.

Conclusion

I therefore find that the landlord has established a **monetary claim** of **\$531.20**, comprised of his professional cleaning costs of \$431.20 and the filing fee of \$100.00.

I direct that the landlord retain the amount of \$531.20 from the tenant's security deposit of \$900.00 in satisfaction of his monetary claim, and direct that he return the balance of \$368.80 to the tenant.

Under authority of Section 67 of the Act, I grant the tenant a monetary **Order** in the amount of **\$368.80**.

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 15, 2011.

Residential Tenancy Branch