



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
 MNSD

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed, October 27, 2011, seeking a Monetary Order for damage to the unit, to keep the security deposit in partial satisfaction of their claim, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant.

The Tenant filed, October 21, 2011, seeking a Monetary Order for the return of double her security deposit.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Was the tenancy a month to month tenancy or was it for a fixed term of one year?
2. Did the Tenant breach the *Residential Tenancy Act*, regulation, and or tenancy agreement?
3. If so, has the Landlord met the burden of proof to obtain monetary compensation as a result of that breach?
4. Did the Landlord breach the *Residential Tenancy Act*, regulation, and or tenancy agreement?
5. If so, has the Tenant met the burden of proof to obtain monetary compensation as a result of that breach?

Background and Evidence

The parties agreed that the following facts are not in dispute:

- they entered into a written tenancy agreement that began on August 1, 2011; and
- rent was payable on the first of each month in the amount of \$650.00; and
- on July 17, 2011 the Tenant paid \$325.00 as the security deposit; and
- the Tenant personally served the Landlord written notice to end the tenancy as of October 1, 2011; and
- on October 1, 2011 the Tenant personally served her forwarding address in writing to the Landlord; and
- no move in or move out condition inspection report forms were completed.

The Tenant affirmed that she understood her tenancy agreement to be a month to month tenancy which is why she agreed to enter into this tenancy and which is why she provided the required one month written notice to end her tenancy when she personally served the Landlord on August 24, 2011. She vacated the rental unit as of October 1, 2011 by approximately 9:30 a.m. at which time she knocked on the Landlord's door to return the keys and requested that he come to the basement suit to conduct the walk through. The Landlord has failed to return her security deposit, even though she provided her forwarding address in writing, therefore she is requesting return of double her deposit.

The Landlord began his testimony by attacking the veracity of the Tenant, stating that the Tenant was lying. First he stated she lied about her tenancy agreement arguing that the tenancy was for a one year lease. Then he stated she lied about when she vacated the rental unit arguing that she did not vacate until late in the afternoon of October 1, 2011. He claims she lied about the date she served him with the notice to end tenancy arguing that he did not receive the notice on August 24, 2011, but did receive it few days later and prior to September 1, 2011. He confirmed these statements were disputed verbal testimony supported by a copy of the written tenancy agreement which he provided in his evidence.

The Landlord affirmed he has not returned the Tenant's security deposit and that he did not make an application prior to this application which was filed on October 27, 2011. He is seeking to retain the security deposit, \$675.00 as "penalty for breaking the lease" which is provided for in the tenancy agreement, \$500.00 for damages caused by holes drilled in the walls, door frame, and around the window, by the Tenant, and to recover the cost of the filing fee. The Landlord referenced the photographs he provided in his

evidence as proof the holes were made by the Tenant in breach of her tenancy agreement.

The Landlord confirmed no evidence was provided to prove the wall repairs had been completed and stated they were completed by a friend of his. He also confirmed he re-rented the unit as of October 1, 2011.

The Tenant admitted to drilling the holes in the walls, door frame and around the window. She stated that she had installed a curtain rod for privacy and had to install chain locks on two of the three doors, and a rope type locking mechanism on the third door to secure her privacy as the Landlord had entered to show her suite without proper notice, at a time when she was sleeping. She removed all the hardware when she moved out leaving the holes unrepaired as she had done in previous tenancies.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Landlord's application

Section 24(2)(c) stipulates that the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The parties agreed that no move in condition inspection report was completed; therefore the Landlord has extinguished his right to claim against the security deposit. Accordingly I dismiss the Landlord's claim to retain the security deposit.

The tenancy agreement states the following:

The Landlord agrees to rent to the Tenant the above-noted premises from the Aug 1 st day of 2011 and thereafter continuing from month to month. (or in the alter-native to the ____ day of Aug 31, 2012), at a monthly rental of 650-DOLLARS. [sic]

Section 6(3)(c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

After careful consideration of the terms listed in the tenancy agreement, as copied above, I find the terms of the tenancy not to be expressed clearly because the agreement states the tenancy will begin on August 1, 2011 and continue from month to month. The Landlord argued the tenancy was for a one year lease because of what is written in brackets after month to month; however if that was the case the tenancy would begin on August 1, 2011 and end July 31, 2012 not August 31, 2012. Accordingly I find the fixed term to August 31, 2012 cannot be enforceable, pursuant to section 6(3)(c) of the Act, and that the tenancy agreement is considered to have been for a month to month tenancy.

As per the aforementioned, I find the Tenant ended the tenancy in accordance with section 44(a)(i) of the Act, by providing 1 month written notice to end the periodic tenancy. Having found the tenancy to be month to month and ended in accordance with the Act, the Tenant cannot be subject to liquidated damages or a penalty lease breaking fee. Accordingly I dismiss the Landlord's claim of \$650.00 for lease breaking penalty.

Section 32(3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The parties agree that the Tenant drilled holes in the walls, door frames, and around the window to install a curtain rod and locks and that she did not repair these holes when she removed the hardware. The Landlord claims \$500.00 for these repairs and stated that they were completed by his friend. No documentary evidence was submitted to support the work was actually completed and at what cost.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there has been insufficient evidence to prove a significant loss, but they

are an affirmation that there has been an infraction of a legal right. Accordingly I award the Landlord **\$75.00** for costs to patch and paint the holes in the walls and door frames caused by the Tenant.

The Landlord has been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Tenant's application

The evidence supports the tenancy ended October 1, 2011, the Landlord re-rented the unit as of October 1, 2011, the Tenant provided the Landlord with her forwarding address on October 1, 2011, and the Landlord filed his application for dispute resolution seeking to retain the security deposit on October 27, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than October 16, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find that the Tenant has succeeded in proving her claim and I award her the return of double her security deposit plus interest in the amount of **\$650.00** (2 x \$325.00 + \$0.00 of interest).

Monetary Order – I find that the each monetary claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the other as follows:

Tenant's monetary award	\$ 650.00
LESS: Landlord's monetary award (\$75.00 + \$25.00)	<u>- 100.00</u>
Offset amount due to the Tenant	<u>\$ 550.00</u>

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$550.00**. This Order is legally binding and must be served upon the Landlord.

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 22, 2011.

Residential Tenancy Branch