



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MMND, MNR, MNSD, FF, O

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. A monetary order for damages to the unit;
2. A monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application from the tenant.

The tenant's application is seeking orders as follows:

1. A monetary order for money owed or compensation for damage or loss under the Act?

Both 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 at the hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damages to the unit?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to keep all or part of the security deposit?

Is the tenant entitled to a monetary order for money owed or compensation for damages?

Background and Evidence

The parties agreed the tenancy began on April 1, 2012. Rent in the amount of \$1,100.00 was payable on the first of each month. A security deposit of \$550.00 was paid by the tenant. Under this agreement laundry facilities were included.

The parties agreed on May 21, 2012, a new tenancy agreement was signed with an effective date of June 1, 2012. Rent was reduced to \$975.00, payable on the first of

each month and no laundry facilities would be included. The tenancy ended on July 10, 2012. Filed in evidence are copies of both of the tenancy agreements.

Landlords' application

The landlord testified on June 30, 2012, the tenant was served with a one month notice to end tenancy for cause with an effective date of July 31, 2012. The landlord stated due to the notice the tenant did not pay rent for July 2012. The landlord stated the tenant was then served with a ten day notice to end tenancy for unpaid rent and was required vacate the premises by July 10, 2012.

The landlord testified that the tenant did not clean the carpets at the end of the tenancy and stated he paid \$150.00 cash to have the carpets cleaned.

The landlord testified that the tenant's dog scratched the front door and the tenant covered up the marks with a felt marker. The landlord stated the tenants dog scratch the walls in the hallway, stairwell and the 2 bedrooms. The landlord stated he paid \$300.00 to have the scratches repaired.

Filed in evidence is a copy of a move-in inspection report and a move-out inspection, however, this report was not completed at the times of the inspection and is not signed by the tenant.

The tenant testified rent was not paid for July 2012.

The tenant testified that she had the carpets cleaned two weeks prior to moving out.

The tenant testified that her dog had made scratches on the front door, however, she took a sample of the paint to a local hardware store and they matched the paint. The tenant stated she painted the front door before she vacated unit. The tenant disputes all other scratches to the walls and any scratches that may have been there would be normal wear and tear.

Tenant's application

The tenant writes in her application that she seeks, "...\$525.00 to cover the cost of me having to move on short notice because of constant harassment and stress it put on me, my son and senior father, as a result of his attitude and unprofessional actions".

The tenant testified that washing machine broke in April 2012 and the landlord failed to have the appliance repaired. The tenant seeks compensation for having to do her laundry elsewhere.

The landlord testified that the washing machine broke in April 2012, however, he had a repair person attend and repair the appliance. The landlord stated the washing machine broke a second time around May 6th or 7th, 2012, due to the tenant overloading

the machine and the appliance was not repaired. The landlord stated as of June 1, 2012, the new tenancy agreement no longer included laundry facilities and the tenant rent was reduced.

The landlord testified after the washing machine broke he provided the tenant with an option to use the laundry facilities at his residence. The landlord stated the tenant was also using the neighbour's laundry facilities.

Analysis

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

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the each party has the burden of proof to prove a violation of the Act and a corresponding loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlords' application

The evidence was the tenant was served with a one month notice with an effective date of July 31, 2012. As a result of receiving the notice the tenant failed to pay rent for July 2012.

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find the tenant has breached the tenancy agreement and Section 26 of the Act and the landlord is entitled to be compensation for unpaid rent for the month of July 2012, in the amount of **\$975.00**.

In this case, the landlords have filed into evidence a move-in and a move-out inspection report, to prove the condition of the rental unit at the end of tenancy. The report was not completed by the parties at the start of tenancy nor was it completed with the tenant at the end of tenancy and the tenant did not sign the report. As a result, I find the condition inspection report was not completed in accordance with Section 23 and 35 of the Act and is not evidence of the state of repair and condition of the rental unit at the end of tenancy.

The evidence of the landlord was the tenant did not clean the carpets at the end of tenancy. The evidence of the tenant was the carpets were cleaned two weeks prior. I find in the absent of any other documents, such as photographs, or receipts of having the carpet cleaned the landlord has not met the burden of proof. Therefore, I dismiss the landlord claim for compensation for carpet cleaning.

The evidence of the landlord was the tenant's dog has scratched the front door, and had scratched the walls in hallways, stairwell and two bedrooms. The evidence of the tenant was she agreed there were scratches on the front door, however, the evidence was that she painted those scratches. The tenant disputed any other scratches and believes if there were any other scratches that there they were normal wear and tear. I find in the absent of any other documents, such as photographs, the landlord has not met the burden of proof. Therefore, I dismiss the landlords' claim for compensation for painting.

Tenant's application

The tenant seeks compensation for moving cost for moving on short notice. However, the tenant was in breach of the Act and tenancy agreement by not paying rent. The landlord served the tenant with a notice to end tenancy in accordance with the Act. I find the tenant has failed to prove a violation of the Act. Therefore, I dismiss the tenants claim for compensation for moving cost.

The evidence of the tenant was the washing machine broke in April 2012 and was not repaired by the landlord. The evidence of the landlord was the washing machine broke in April 2012 and a repair person attended and repaired the appliance. The evidence of the landlord was it was either May 6 or 7, 2012, when the washing machine broke a second time and the appliance was not repaired.

In the absents of any other documents the tenant has failed to prove the washing machine was broken prior to May 6, 2012, however, the evidence does support that the tenant did not have a washing machine from May 6 to May 31, 2012, which was a service provided in the tenancy agreement dated February 14, 2012. Therefore, I will allow the tenant a nominal amount in compensation for the loss of that service during that time period. I grant the tenant compensation in the amount of **\$75.00**.

The new tenancy agreement which was signed on May 21, 2012, and effective June 1, 2012, did not provided laundry facility as such the tenant is not entitled to compensation after May 31, 2012.

I find that the landlords have established a total monetary claim of **\$1,050.00** comprised of the above amount and the \$50.00 fee paid for this application.

I find the tenant has established a total monetary claim of **\$125.00** comprises of the above amount and the \$50.00 fee paid for this application.

The tenant's monetary claim (\$125.00) will be deduction from the landlords' monetary claim (\$1,050.00). The balance due to the landlord is **\$925.00**.

The landlords are allowed retain the deposit of **\$550.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$375.00**.

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

Conclusion

The tenant is granted a monetary order which is offset by the landlords' monetary order. The landlords are to retain the security deposit in partial satisfaction of the claim and are granted a monetary order for the balance due.

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: September 28, 2012.

Residential Tenancy Branch