Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants applied for authorization to obtain a return of their security deposit pursuant to section 38 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Both parties confirmed that they had received one another's dispute resolution hearing packages. However, the landlord testified that there was no copy of the tenants' application for dispute resolution in the registered mail package sent to her by the tenants on September 10, 2012. Although the tenants supplied written evidence that they had sent a registered mail package to the landlord on September 10, 2012, there is disputed testimony as to whether this package included a copy of the tenants' application for dispute resolution.

In many circumstances, an allegation from a respondent that the application for dispute resolution had not been provided to the respondent would require re-service of this document to the respondent. This would ensure that the respondent had a proper opportunity to address the case presented by the applicant that had given rise to this hearing.

In this case, I advised the parties that I saw no need to adjourn the hearing to ensure that service had occurred. I made this determination because the landlord's own application included an application to be given authorization to retain the tenants' security deposit. Thus, a hearing of an application regarding entitlement to the tenants'

security deposit, the sole issue identified in the tenants' application for dispute resolution, was already before me by way of the landlord's own application. To ensure that the landlord was properly informed of everything substantive in the tenants' application for dispute resolution, I read aloud the contents of the Details of the Dispute section of the tenants' application for dispute resolution. The tenants confirmed that the Details of the Dispute were accurate and reflected their application for dispute resolution. I proceeded with the hearing on the basis that the landlord's interests were in no way jeopardized or compromised by the alleged failure of the tenants to include a copy of their application for dispute resolution in the dispute resolution hearing package the tenants sent to the landlords. The absence or presence of the tenants' application for dispute resolution in the dispute resolution hearing package sent to the landlord had no effect on the landlord's ability to prepare for this hearing or present evidence with respect to who was entitled to the tenants' security deposit. I find that the landlord was fully prepared to address the issue of entitlement to the tenants' security deposit as part of her application for dispute resolution.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, losses and damage arising out of this tenancy? Which of the parties are entitled to the tenants' security deposit? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, receipts, invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This one-year fixed term tenancy commenced on October 1, 2011. Monthly rent was set at $1,250.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold the tenants' $625.00 security deposit paid on October 2, 2011.

The parties agreed that they conducted joint move-in and joint move-out condition inspections. Copies of the October 1, 2011 and August 30, 2012 reports of these inspections were entered into written evidence. The parties agreed that the landlord provided copies of these reports to the tenants.

The parties agreed that the tenants vacated the rental unit by August 30, 2012. The tenants returned the following day to remove garbage from the rental unit. Although the female tenant testified that the tenants left one of the keys in the rental unit, she

confirmed that the tenants did not return the other key. The landlord gave undisputed testimony that the tenants were unwilling to return the remaining key to the rental unit until the landlord returned their security deposit.

In the Details of the Dispute in the tenants' application for dispute resolution, the tenants maintained that they gave the landlord three months oral notice that they were planning to move out by August 31, 2012. The landlord testified that the first notice that she received from the tenants that they planned to end their tenancy by the end of August 2012 was a phone call she received on August 29, 2012. The parties agreed that the tenants did not provide a written notice to end their tenancy nor did the parties sign any mutual end to tenancy agreement.

The tenants applied for a return of their $625.00 security deposit. They asserted that they were entitled to receive a return of their security deposit within 10 days of the end of their tenancy.

The landlord's application for a monetary award of $4,081.10 included the following items:

Item	**Amount**
Unpaid Rent September 2012	$1,250.00
Loss of Rent October 2012	1,250.00
Water Damage to Laminate Countertop	1,116.64
Repair Drywall and Repainting	565.60
Replace Damaged Bathroom Cabinet	1,161.74
Cleaning	80.00
Change Locks due to Unreturned Keys	197.12
Damaged Window Screen	10.00
Filing Fee plus Fee to Join Dispute	75.00
Total of Above Items	**$5,706.10**

Analysis – Landlord's Application for Unpaid Rent and Loss of Rent

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the September 30, 2012 date specified in that agreement. Their tenancy agreement established that the tenancy may continue beyond September 30, 2012 as a periodic tenancy unless the parties entered into a new tenancy agreement. As such, the

landlord is entitled to compensation for losses she incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for October 2012, the tenants would have needed to provide their notice to end this tenancy before September 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing.

I find that the tenants did not comply with the provisions of their fixed term tenancy agreement, section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing. There is undisputed evidence that the tenants did not pay any rent after August 2012. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord testified that she placed an advertisement on Kijiji, a popular rental website, on August 30, 2012, the day after the tenants advised her that they would be moving out by the end of August 2012. She testified that she requested a monthly rent of $1,350.00 in her advertisement. The tenants testified that when they returned to seek their security deposit in early September, they could see that someone else had moved into the rental unit. They speculated that the landlord's son had moved into this rental unit, noting that there was furniture in the rental unit. The landlord testified that no family member moved into the rental unit after the tenants left. She said that she did move a sofa from her residence to this unrented unit so as to accommodate a sale of that piece of furniture. She also said that she repositioned some of her other belongings into the vacant rental unit. She testified that she has only recently rented the premises to a new tenant, a tenancy that takes effect on January 1, 2013.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for September 2012, the last month of the tenants' fixed term tenancy. She received very little formal notice that the premises would be vacant for September 2012. The tenants' failure to return all of the keys to the rental unit also delayed the landlord's attempts to re-rent the premises. As such, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenants' losses for September 2012. I issue a monetary award in the landlord's favour in the amount of $1,250.00 for unpaid rent for September 2012.

By September 1, 2012, the tenancy had ended, a joint move-out condition inspection had been conducted, the tenants had vacated the rental unit and the landlord had

received a key for the rental unit. In order to demonstrate entitlement to a monetary award for October 2012, I find that the landlord faces a higher test in demonstrating that her failure to obtain rent from this rental unit arose as a result of the tenants' delayed notification of their intention to end this tenancy.

I am not satisfied that the landlord has adequately demonstrated that she is entitled to a further monetary award for loss of rent for October 2012. There is a question as to whether anyone else was residing in the rental unit between the time the tenants vacated the premises and the landlord obtained a new tenant for January 1, 2013. Given that the tenants had claimed that someone else was living in the rental unit shortly after they vacated the premises, the importance of demonstrating the landlord's attempts to re-rent the premises is magnified. The landlord did not provide any written proof of the efforts she undertook to re-rent the premises for October 2012 or any specific details regarding showings or enquiries received. Rather, she testified that she attempted to obtain $100.00 more in monthly rent from new tenants than she had been receiving from the tenants during their fixed term tenancy. Under these circumstances, I find that the landlord has not demonstrated that she undertook efforts to mitigate the tenants' losses for October 2012 to the extent necessary to entitle the landlord to a monetary award for this item. I dismiss the landlord's application to obtain a monetary award for loss of rent for October 2012, without leave to reapply.

Analysis – Landlord's Application for Damage

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

At the hearing, the landlord gave undisputed testimony that this was a new rental unit when the tenants commenced their tenancy. She testified that no one else had ever lived in this rental unit. The tenants did not dispute the accuracy of the joint move-in condition inspection report, which listed many new items in place at the commencement of this tenancy.

The landlord confirmed that she had not entered into written evidence a copy of a receipt for the replacement of the laminate countertop. She testified that she has back-ordered this item damaged by the tenants as a result of severe water damage, but has not had the countertop replaced. While she submitted an estimate for this work, the tenants questioned the authenticity of this estimate. As the landlord has not demonstrated that she has incurred actual losses for this item and has re-rented the premises to new tenants, I dismiss the landlord's application for a monetary award for replacement of this countertop without leave to reapply.

The landlord's claim for a monetary award to repair drywall and repainting is also based on a September 12, 2012 estimate of the cost of repairing and repainting the interior of the rental unit. Although she did not provide an actual receipt for these expenses, she testified that this work has been completed. The parties provided conflicting written, oral and photographic evidence with respect to the extent of the damage that arose during this tenancy. The joint move-in and move-out condition inspection reports reveal a number of scrapes and marks that the landlord claimed needed repair and repainting. Photographs submitted by both parties revealed marks, scrapes and small holes, the severity of which was disputed by the parties.

Residential Tenancy Branch Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Arbitrators in determining claims for damage. According to this Guideline, the useful life of an interior paint job is estimated to be four years. In this case, this would reduce the landlord's claim for minor repairs and repainting by 25% from $565.60 to $424.20. Although I accept that damage did arise during this tenancy that required repairs and repainting, the landlord has not submitted actual receipts to document any losses arising out of this item. As such, I order a monetary award in the landlord's favour in the amount of $212.10. This amount is one-half of the $424.20 monetary award to which the landlord would have been entitled to receive had she provided receipts to document that the painting and repairs had been conducted and that she had incurred actual losses to repair this damage as a result of this tenancy.

I have carefully considered the landlord's oral, written and photographic evidence with respect to her claim for a monetary award to replace bathroom cabinets damaged by the tenants' placement of adhesive child locks on these items. The landlord has not replaced these cabinets, nor has she demonstrated any losses resulting from the removal of the child locks in question. I dismiss the landlord's claim for this item without leave to reapply as there is no evidence that she has incurred any actual losses resulting from the tenants' actions in this regard.

Section 37(2) of the *Act* requires that a tenant must leave the premises in reasonably clean and undamaged condition at the end of a tenancy. The tenants and the male tenant's father testified that the rental unit was left in clean condition at the end of this tenancy. The joint move-out condition inspection report reveals that at the time of that inspection, some cleaning was identified as necessary. As the landlord's $80.00 charge for cleaning included the cleaning of the deck, I find that the landlord is entitled to a monetary award of $50.00 to recover most of the cleaning expenses incurred by the landlord at the end of this tenancy.

The landlord's claim to change the locks due to unreturned keys is of concern. The parties submitted two separate copies of what appeared be the same receipt for locksmith services. The tenants provided oral and written evidence that the date on the landlord's Receipt Number 13394 for a service call and labour to retrofit the locks in this rental unit was altered from August 15, 2011 to August 15, 2012. The tenants supplied a second copy of this same Receipt Number for an identical $197.12 charge for the same services, but dated August 15, 2011. In response, the landlord testified that it was likely that the locksmith who conducted this work must have become confused as to which year it was when he issued one of the receipts. The male tenant testified that the August 15 date cited on this receipt would actually pre-date the end to this tenancy if it were indeed an accurate reflection of costs incurred in 2012 as the landlord was claiming.

With respect to the landlord's claim for rekeying costs, I should first note that I find on a balance of probabilities that the landlord has not demonstrated that she incurred costs of $197.12 for the replacement of locks as per her Receipt Number 13394 for costs incurred on August 15, 2012. I find the male tenant provided compelling testimony that the receipt entered into written evidence by the landlord could not possibly have been accurate, dated as it was for August 15, as this was two full weeks before this tenancy ended. In addition and of more direct relevance to my finding, I note that section 25(1) of the *Act* places the burden of rekeying or changing locks at the start of a new tenancy on the landlord who is to pay all costs associated with this item. Thus, the landlord would have been required to rekey the locks whether or not the tenants returned all of their keys in order to secure a new tenant for these premises. As such, I dismiss the landlord's application for reimbursement of her locksmith charges without leave to reapply.

As the landlord has not submitted receipts to confirm losses relating to a damaged window screen, I dismiss the landlord's application for this item without leave to reapply.

Analysis –Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, there is conflicting evidence as to when the tenants provided their forwarding address in writing to the landlord. The tenants claimed this occurred on September 8, 2012. The landlord testified that she first received the tenant's forwarding address in writing on September 15, 2012, when she received the tenants' dispute resolution hearing package.

Given that the tenants have not demonstrated that they provided their forwarding address in writing to the landlord until such time as they sent the landlord their application for dispute resolution, I am not satisfied that the tenants are entitled to a monetary award pursuant to section 38(6) of the *Act*. However, I do allow the tenants a monetary award to recover their $625.00 security deposit.

As both parties have been successful in their respective applications, I find that both sides bear the costs of their filing fees for their applications.

Conclusion

I issue a monetary award in the landlord's favour in the following terms, which allows the landlord to recover unpaid rent, losses and damage arising out of this tenancy and to retain the tenants' security deposit in partial satisfaction of the monetary award:

Item	**Amount**
Unpaid Rent September 2012	$1,250.00
Repair Drywall and Repainting	212.10
Cleaning	50.00
Less Security Deposit	-625.00
Total Monetary Order	**$887.10**

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.

Dated: November 26, 2012

Residential Tenancy Branch