



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC MNSD
For the landlord: MNR MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for a monetary order for the return of her security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord applied for a monetary order for unpaid rent or utilities, to keep all or part of the pet damage deposit and security deposit, and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence presented 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.

The parties confirmed that they received the documentary evidence package from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A periodic, month to month tenancy began on December 1, 2013. Monthly rent in the amount of \$950.00 was due on the first day of each month. A security deposit of \$475.00 was paid by the tenant at the start of the tenancy. The tenant vacated the rental unit on December 28, 2013.

Landlords' claim

The landlords have claimed \$950.00 for loss of January 2014 rent due to the tenant failing to provide sufficient notice to end the tenancy in accordance with the *Act*. The parties agreed that the tenant provided written notice to the landlords dated December 21, 2013. A copy of a December 28, 2013 e-mail was submitted in evidence by the tenant where landlord "WR" (the "landlord") indicates that the tenant's notice is effective January 31, 2014. During the hearing, the tenant confirmed that rent for the month of January 2014 had not been paid.

The parties confirmed that the tenant's written forwarding address was given by the tenant on December 30, 2013 and received by the landlords the same day, December 30, 2013. The landlords filed their application claiming towards the tenant's security deposit on January 3, 2014.

Tenant's claim

The tenant has claimed \$654.79 comprised of the following:

| | |
|--|-----------------|
| Item 1. Canada Post - change of address costs | \$50.35 |
| Item 2. U-Haul – truck rental costs for moving | \$104.44 |
| Item 3. Loss of quiet enjoyment | \$500.00 |
| TOTAL | \$654.79 |

The tenant testified that she left the rental unit due to the noise caused by the landlords and a safety issue regarding how she was spoken to by the male landlord. The tenant confirmed that she did not put any of her concerns in writing prior giving her notice to end tenancy on December 21, 2013, effective January 31, 2014.

The tenant was unable to provide specific dates regarding the alleged "noise" except for an incident on December 24, 2013, which is three days after she served a one month written notice to end the tenancy to the landlords.

The tenant called her witness, "SR" who testified under oath that on Christmas Eve, December 24, 2013, there was noise in the rental unit at 11:30 p.m. and that the tenant "banged and called upstairs" to the landlords. The witness stated that the landlord "got rude" as the tenant had the landlord on speakerphone during the phone call. The witness stated that the landlord stated that the tenant had mental health issues.

The landlord cross-examined witness "SR". Under cross-examination, witness "SR" stated that she saw the tenant under stress but denied previous confrontations with the landlord. The witness stated there was constant thumping from before 10:00 p.m. to 11:30 p.m. on December 24, 2013 and that people were walking really hard on the floor upstairs. The landlord asked the witness what the tenant thumped on the ceiling with, and the witness replied that she could not recall. The landlord asked the witness why he was on speakerphone and the witness replied, "for evidence, I'm not sure". The landlord asked for specific examples from the witness regarding the stress she has seen the tenant under to which the witness replied, "rather bothersome noise and her last place was pretty noise too and that some things weren't fixed."

The landlord denied making the noises alleged by the tenant and the tenant's witness, and denied making comments relating to the mental health of the tenant.

The tenant referred to seven photos submitted in evidence which the tenant claimed shows the "unsafe condition" of the rental unit. The tenant confirmed that during the walk through before she moved into the rental unit, she saw everything represented in the photos submitted in evidence. The tenant stated that the amount of \$500.00 being claimed was to "match the security deposit". The tenant stated that she needed to get out of the rental unit as soon as possible as she needed sleep and could not sleep due to the noise in the rental unit.

Analysis

Based on the documentary evidence, the testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or 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' monetary claim – The landlords have claimed \$950.00 for loss of January 2014 due to the tenant failing to provide proper notice in accordance under section 45 of the *Act*. The parties agreed that the tenant vacated the rental unit on December 28, 2013. Section 45 of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable

period **after the tenant gives written notice of the failure**, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[emphasis added]

Section 45(3) of the *Act* described above requires that a tenant put any concerns in writing regarding a landlord failing to comply with a material term of the tenancy agreement. In the matter before me, the tenant confirmed that she did not put her concerns in writing to the landlords before serving her notice to end the tenancy. Therefore, I find the tenant did not put any of her concerns in writing based on the testimony provided and failed to give the landlords a reasonable opportunity to address any breaches of the tenancy agreement being claimed by the tenant, including that of alleged noise by the landlords.

Based on the above, I find the tenant breached section 45 of the *Act* by providing written notice to end the tenancy on December 21, 2013 and vacating the rental unit on December 28, 2013 without paying rent for January 2014. I find the earliest date to which tenant's notice would have been effective was January 31, 2014. Therefore, I find the landlord has met the burden of proof to support their claim and that the tenant owes \$950.00 as compensation to the landlords for loss of January 2014 rent.

Tenant's monetary claim – Section 38 of the *Act*, requires that a landlord must return or make a claim against the security deposit within 15 days of the later of the end of tenancy and the date the forwarding address is provided. The parties confirmed that the tenant provided her written forwarding address to the landlords on December 30, 2013. The landlords filed their application to claim towards the tenant's security deposit on January 3, 2014, which I find is within the 15 day timelines permitted under section 38 of the *Act*. Therefore, I find the landlords complied with section 38 of the *Act*.

I find that the photos submitted by the tenant do not support the tenant's claim of an unsafe rental unit. Furthermore, I find that the tenant provided insufficient evidence of any loss of quiet enjoyment, and failed to prove part one of the four-part test for damages or loss described above. The tenant was unable to provide specific details including the dates and times of the alleged noise, with the exception of one date, December 24, 2013, which was after the tenant provided her notice to end the tenancy. Given the above, and taking into account my finding above that the tenant breached

section 45 of the *Act* by failing to provide proper notice to end a periodic tenancy, I find that the tenant's monetary claim is entirely without merit, and is dismissed in full due to insufficient evidence, without leave to reapply.

As the landlords' claim had merit, I grant the landlords the recovery of their filing fee in the amount of \$50.00.

I find that the landlords have established a total monetary claim of **\$1, 000.00** comprised of \$950.00 for loss of January 2014 rent, plus the \$50.00 filing fee. **I ORDER** the landlords to retain the tenant's full security deposit of \$475.00 in partial satisfaction of the landlords' monetary claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of **\$525.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant's application is dismissed in full, due to insufficient evidence, without leave to reapply.

The landlords have established a total monetary claim of \$1, 000.00 comprised of \$950.00 for loss of January 2014 rent, plus the \$50.00 filing fee. The landlords have been ordered to retain the tenant's full security deposit of \$475.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of \$525.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 29, 2014

Residential Tenancy Branch

