



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on business on December 22, 2015. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was sufficiently served on tenant by mailing, by registered mail to where the tenant resides on January 6, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On May 30, 2014 the parties entered into a written tenancy agreement that provided that the tenancy would start on July 1, 2014 and continue on a month to month basis. The tenancy agreement provided that the tenant(s) would pay rent of \$995 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$497.50 on June 11, 2014.

The rental unit was painted on June 3, 2014. The landlord produced an invoice in the sum of \$787.03.

On June 11, 2014 the tenant viewed the apartment. At that time her only concern was urine stains on the bedroom carpet. The resident manager assured the tenant that if the stains could not be mitigated by professional cleaning new carpets would be installed.

On June 26, 2014 the bedroom, hallway and living room carpets were cleaned by a professional carpet cleaning company. The professional carpet cleaning company was unable to properly remove the stain and on June 28, 2014 the bedroom carpet was replaced.

On June 30, 2014 the tenant arrived to take possession of the rental unit. At that time the landlord and the tenant conducted an inspection and the Condition Inspection Report indicates the tenant found the unit satisfactory.

The tenant testified that she was tired when she arrived on June 30, 2014 and did not inspect the rental unit with the care that she should have.

The tenant testified that the rental unit felt dirty. The bathroom could not be properly cleaned. There was an odour of urine. There was scuff marks on the wall. The cupboards were dirty and showed the presence of cockroaches.

On July 1, 2014 the tenant rented a Steam Cleaner from a local grocery store and attempted to clean the carpet. The tenant testified the urine odour continued to overwhelm her. She testified that the previous tenant was urinating in the closet. Further she has been told that the condition could cause serious health problems.

On July 2, 2014 the tenant contacted the building manager and made a number of complaints including:

- The bathroom floor was sticky and had yellow marks.
- The carpet smelled.
- The suite had never been painted.
- There was a mark on the bedroom door frame.
- There was finger marks on the cupboard door.

On July 3, 2014 the tenant hired a carpet cleaning company. She produced an estimate which stated "Odour is permanent part of carpets. With our deep cleaning and deodorizing will not get it out." The tenant determined that she could not live in the rental unit and put a stop payment on her rent cheque for July. She produced a number of photos including photos which show carpet stains and flaws with the apartment.

On July 4, 2014 the tenant telephoned the building manager in the early morning hours stating that she was leaving and had left a letter, pictures and suite keys in the mail box. She stated she was ending the tenancy immediately and did not provide a forwarding address.

The letter referred above was dated July 2, 2014 and stated that she was giving notice to end the tenancy immediately. The typed portion stated she was ending the tenancy on August 31, 2014 but that was crossed off and replaced with the word immediately. The letter demands the return of the security deposit, identifies claims she intends to make and states she would be providing her forwarding address once established. The Application for Dispute Resolution filed by the landlord seeks a monetary order of \$3000.

The landlord disputes the tenant's claim on the following basis:

- The rental unit was in satisfactory condition when she took possession as evidenced by the Condition Inspection Report signed by the tenant on June 30, 2014.
- The stains in the carpet were caused by the tenant cleaning the carpet using the wrong cleaning agents.
- The problems in the bathroom were not caused by urine staining the floor but by a yellow glue leaching through the linoleum.
- The landlord hired a carpet cleaning company after the tenant vacated and the stains were removed without difficulty.
- The rental unit was re-rented for August 1, 2014 without complaints.
- If the landlord breached a material term the tenant failed to give the landlord an opportunity to correct the situation.
- The landlord testified they had previously replaced the carpet in the bedroom as requested by the tenant.

Tenant's Application:

Section 45(3) of the Residential Tenancy Act provides as follows:

Tenant's notice

45 (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.

The tenant failed to follow section 45(3) of the Residential Tenancy Act. The notice in the letter dated July 2, 2014 states this is the tenant's notice to terminate the tenancy immediately. It does not give the landlord written notice of an alleged breach of a material term of the tenancy agreement nor does it give the landlord an opportunity to correct within a reasonable period of time after written notice was given. The tenant testified the building manager told her that the landlord was not likely to replace the carpet. The letter from the building manager disputes this. The representative of the landlord disputes this allegation. While the tenant may have thought the landlord was not going to make any changes, this does not relieve the tenant of the obligation set out in section 45(3).

As a result I determined the landlord is not responsible for any of the tenant's claims for damages resulting from the end of tenancy and all of those claims are dismissed. The tenant breached the tenancy agreement by failing to give a clear month's notice. She voluntarily left the rental unit and put her belongings in storage for another month.

The tenant has made some 30 claims in the Monetary Order Worksheet. It is not necessary to deal with each them as the tenant's application is dismissed in its entirety. The tenant went on a 3 week training course in Calgary and placed her belongings in storage. The landlord is not responsible to compensate the tenant for purchases made over the next month to find replacement clothes and replacement personal belongings which she could not access because her goods were in storage. Those claims are dismissed. Further, I dismissed the tenant's claims for costs incurred for alternate accommodation, dinners and food as the tenant is in breach of the tenancy agreement. I dismissed the tenant's claim of \$500 for hardship, stress for taking time out from her studies to find another apartment as these problems were caused by the tenant's breach of the tenancy agreement.

The Application for Dispute Resolution filed by the tenant seeks compensation for the cost of cleaning the rental unit when she took possession including carpet cleaning.

Section 31(1) of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 21 of the Residential Tenancy Act Regulations provides as follows:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

On June 30, 2014 the tenant conducted a condition inspection with the building manager and signed the Condition Inspection Report indicating that she was satisfied with the condition on the rental unit at that time. The tenant has failed to establish on a preponderance of evidence that the Condition Inspection Report does not accurately set out the condition of the rental unit. As a result I dismissed the tenant's claim for the cost of cleaning.

Summary:

In summary I determined the tenant failed to establish a claim in law and as a result the tenant's claims are dismissed in their entirety without leave to re-apply.

Landlord's Application:

The Application for Dispute Resolution filed by the landlord claims the sum of \$995 for non-payment of rent for July. Section 45(1) of the Act provides as follows:

Tenant's notice

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.

The tenant paid the rent for July by cheque. On July 3, 2014 she put a stop payment on that cheque. She advised the building manager on July 4, 2014 that she was ending the tenancy and referred to a letter she left in the mailbox that ended the tenancy immediately. I determined the landlord sufficiently attempted to mitigate its loss but was not able to find a tenant for July. As a result I determined the landlord is entitled to \$995 for loss of rent for July. The Application for Dispute Resolution filed by the landlord appears to have included the claim to retain the security deposit as an additional claim. The landlord is entitled to have the security deposit applied against its claim but is not entitled to keep it as an additional claim.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$995 plus the \$50 filing fee for a total of \$1045.

Security Deposit

I determined the security deposit totals the sum of \$497.50. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$547.50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order 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: March 12, 2015

Residential Tenancy Branch

