



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC FF

Introduction

This hearing dealt with applications from both the landlord and the tenant (NH) under the *Residential Tenancy Act* (“the Act”). The landlord applied for a monetary order for unpaid rent, damage or loss pursuant to section 67 and authorization to recover the filing fee for this application from the tenant pursuant to section 72. The tenant (NH) applied for the return of his security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage or loss as a result of this tenancy?

Is the tenant entitled to the return of a security deposit with respect to this tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began approximately May of 2008. Neither landlord nor tenant knew the exact date that this tenancy began. Both parties agreed that the tenant vacated the residence at the end of October 2014. The landlord testified that the tenant/respondent’s father was the original tenant and that the father paid the security deposit in the amount of \$350.00. The landlord also testified that the father has vacated the rental unit and the tenant remained until October 2014. The landlord testified that when the father vacated the rental unit in approximately 2011, he returned the security

deposit to the father and did not take a new deposit from the tenant/respondent. The tenant applied for return of the security deposit. The landlord applied for compensation for unpaid rent and other losses as a result of this tenancy.

The landlord testified that his family and the tenant's family have had a good relationship for many years. He testified that when the tenant's father and family visited India for several months, he did not charge them rent in their absence. He testified that the original tenancy agreement with the tenant's father was a verbal agreement. The landlord testified that, in September 2014, he entered into a new verbal agreement with the tenant/respondent. The landlord testified that the tenant did not pay rent for September 2014 or provide a security deposit.

The landlord testified that his relationship with the tenant has been difficult since the father moved out. He testified that when the tenant vacated the rental unit, the kitchen counter was severely damaged. He testified that it was broken and cracked "like someone had jumped on it". He testified that when the tenant vacated the rental unit, the flooring was torn and marked with some kind of chemical stains. The landlord testified that at the end of this tenancy, the kitchen sink had a hole in it and so the kitchen sink needed to be replaced. As well, he testified that the walls required painting. The landlord did not submit any pictures or assessments of the damage to the rental unit. The landlord provided a receipt dated January 14, 2015 from a handyperson and a typewritten invoice with no company name as well as a handwritten note both dated January 10, 2015 for repair work done. The landlord also submitted three receipts from home repair stores. Those receipts were all dated January 10, 2015.

The tenant disputed that he or his family left damage in the rental unit. He submitted a video taken of the residence at move-out. He submitted that it illustrated the residence was left clean with no damage. However, the areas claimed to be damaged by the landlord were not shown in any detail in the video. The landlord submitted that the tenant's video shows some of the damage and supports his claim.

The landlord provided undisputed testimony that the tenant informed him on October 23, 2014 that he was vacating the residence immediately. Both parties agreed in their testimony that the tenant vacated the rental unit without prior notice on October 23, 2014. Both parties agreed that the tenant did not pay November 2014 rent. The landlord testified that before the tenant failed to pay September 2014 rent on time and that he did not pay \$400.00 of his October 2014 rent, or any of his November 2014 rent. The landlord also claimed that utilities to be paid by the tenant were outstanding. The tenant testified that he had paid full rent in September 2014 and October 2014.

The tenant testified that he paid a security deposit to the landlord. He testified that he paid the \$350.00 security deposit in September after the landlord had asked for a second deposit on the rental unit. He testified that he starting paying a rental amount of \$750.00 payable on the first of each month plus 40% of the homes' utilities bills. He testified that the landlord told him that there were too many people residing in his rental unit and that the rent would be increased to \$800.00 per month plus 60% of the utilities.

The tenant testified that his father did not move out and still resides in the rental unit. His father was unavailable to testify. The tenant submitted a letter written by his uncle as evidence. It stated that the uncle had witnessed the \$350.00 security deposit being provided from the tenant to the landlord.

Analysis

Given the conflicting testimony, this case partially hinges on a determination of credibility. In addition to the demeanour of the parties who gave evidence, I have considered the content of the testimony, and whether it is consistent with the other evidence provided with respect to these cross-applications.

I found the landlord's evidence generally credible in that he answered all questions asked of him in a calm and candid manner, and never wavered in his version of what happened throughout the history of this tenancy. I found the tenant's evidence on the other hand, less credible.

As well as considering the credibility of the parties to this matter, I have also considered the burden of proof, which falls to each applicant with respect to their respective claims. The tenant has applied for return of a security deposit in the amount of \$350.00. The landlord denies accepting a security deposit from the tenant. I find that a reasonable tenant in these circumstances would have submitted proof that he paid a security deposit. The landlord's application stated clearly that, "the tenant did not pay a security deposit... The tenant moved out without notice, and without paying 3 months' rent of \$800 per month." The tenant did not supply any proof that he paid a deposit. The tenant had opportunity to have witnesses, including his father, testify regarding the deposit. The tenant testified that the landlord did not provide receipts but it was within the tenant's power to provide other evidence of the exchange of those funds. I find the tenant has not met the burden of proof to establish that a security deposit was paid as a part of this tenancy. Therefore, I do not find that the tenant is entitled to return of any claimed deposit amount. I dismiss the tenant's application for return of a security deposit or recovery of a filing fee.

I also find that a reasonable tenant in the circumstances, being aware that the landlord is seeking a monetary order for unpaid rent, would provide some proof that he paid the rent for the months in debate. The tenant testified that he came from India and did not know the rules regarding paperwork and keeping records of cash payments. However, the tenant cannot claim ignorance of the law, particularly with respect to this 7 year tenancy. The tenant did not dispute that he failed to pay the landlord rent for November 2014, claiming again that he was not aware of the notice provisions of the *Act*. Section 45 of the *Act* requires that a tenant provide a minimum of one months' notice when ending a tenancy. Given all of the circumstances and in consideration of a tenant's responsibility to provide notice pursuant to section 45 of the *Act*, I find that the landlord is entitled to \$400.00 for October 2014 rent and \$800.00 for November 2014 rent. I do not find that the landlord has presented sufficient evidence to support his claim that September 2014 rent was unpaid by the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator 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.

As part of his documentary submissions, the landlord submitted a series of receipts from different hardware stores. The landlord provided some evidence with respect to the receipts, claiming two reflected repair materials for the countertops and one reflected replacement of the kitchen sink.

The landlord also submitted a receipt or invoice from a contractor. It was typewritten with no company header. It did not provide any amounts, was dated January 10, 2015 and indicated,

1. Change and replace kitchen counter top as it is broken and hole in sink.
2. Replace floor covering in bedroom. Carpets in bedroom were in new condition (owner said changed Nov 2013) but not safe because some areas torn and nails exposed so replaced all floor coverings.

A receipt was submitted by the landlord allegedly from the contractor dated January 14, 2015 and stating an amount paid of \$2450.00.

I find that the landlord/claimant has not proven the existence of the damage or loss. The landlord submitted no photographic or documentary evidence to detail and support the

nature of his claim for damage to the unit. Contrary to the submissions of his counsel, I do not find that the tenant's digital evidence sufficiently supports the landlord's claim with respect to damage to the rental unit. I find that the receipts, dated approximately 3 months after the tenant vacated the rental unit do not sufficiently show the connection between the alleged damage and the tenant's actions during the course of his tenancy. Therefore, I find that the landlord is not entitled to be compensated for the damage and repairs to the rental unit.

As I find the landlord is entitled to \$1200.00 in unpaid rent and therefore he was partially successful in his application, I find the landlord entitled to recover the \$50.00 filing fee for this application.

Conclusion

I dismiss the tenant's application for return of a security deposit or recovery of a filing fee.

I issue a monetary order in the amount of \$1250.00 in favour of the landlord.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: July 3, 2015

Residential Tenancy Branch