



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND MNSD FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim, and an application by the tenant for return of the security deposit.

The landlord submitted photographs which were not provided to the tenant, and I therefore did not admit or consider the landlord's photographs as evidence in my decision.

Issue(s) to be Decided

Is the landlord entitled to the amount claimed for lost revenue?

Is the landlord entitled to the amount claimed for cleaning and repairs?

Background and Evidence

The tenancy began on September 1, 2007. Rent in the amount of \$750 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$375. On November 9, 2008, the tenant provided the landlord with written notice of her intention to vacate on November 30, 2008. The tenant moved out at approximately 7:30 pm on November 30, 2008.

The landlord's evidence was as follows. After November 1, 2008 the tenant provided some indication that she might move out, but she did not provide definite written notice until November 9, 2008. The tenant had made numerous oral complaints in the past

regarding leaking and mould, but the landlord could not find evidence of leaking. When the landlord inspected the rental unit after the tenant finished her move-out, the landlord discovered poorly repaired holes in the walls and a poorly cleaned oven. The landlord had the repairs and cleaning completed on December 3, 2008, at a cost of \$70. The landlord had secured a new tenant to move in on December 1, 2008, but because the tenant failed to move out before 7:30 pm on November 30, 2008, the landlord did not have time to conduct cleaning and repairs before the new tenant took possession. The new tenant stated that he would move in on December 15, 2008 if the landlord was unable to find a new tenant before that date. The landlord advertised a vacancy on a sign outside the building, but they were not able to find another new tenant for before December 15, 2008. The landlord claims \$70 for the repairs and cleaning, and \$375 for lost revenue for the first half of December 2008.

The tenant's evidence was as follows. The tenant repeatedly attempted to have the landlord address the leaking problem, which was causing mould and affecting her health. The landlord would not address the problem, so the tenant was forced to move out. The tenant acknowledged that the holes in the walls may not have been adequately repaired and the oven may not have been properly cleaned.

Analysis

I find that the landlord is entitled to the cleaning and repair costs of \$70.

In regard to the landlord's claim for lost revenue, I find the following. The tenant did not provide sufficient evidence to establish that the condition of the rental unit was such that the tenant was entitled to end the tenancy without proper notice. When a tenant does not give proper notice, or where the tenant has otherwise caused damage that prevented the landlord from re-renting, the tenant may be responsible for the landlord's lost revenue. However, the landlord must take reasonable steps to re-rent as soon as possible and reduce the potential loss of revenue. In this case, I find that the tenant's late move-out on November 30, and the damages and lack of cleaning, resulted in the landlord not being able to re-rent for December 1, 2008. However, the landlord

completed the cleaning and repairs on December 3, 2008, and the only step the landlord took to attempt to re-rent before December 15th was to advertise vacancy on the sign outside the building. I therefore find that the landlord did not take reasonable steps to mitigate their loss, and they are only entitled to lost revenue for December 1 to 3, 2008, in the amount of \$72.58.

As the landlord was only partially successful in their claim, I find that the landlord is entitled to partial recovery of the filing fee for the cost of their application, in the amount of \$15.

Conclusion

I order that the landlord retain \$157.58 of the security deposit in full satisfaction of their claim, and return the remainder of the security deposit, plus applicable interest of \$7.53 to the tenant. I grant the tenant an order under section 67 for the balance due of \$224.95. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 28, 2009