



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for loss or damage, to retain the deposit paid in satisfaction of the claim and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

Preliminary Matter

At the start of the hearing both parties indicated that they had witnesses who would be available to testify. During the hearing it was determined that neither party required witness testimony, information that, in the case of the tenants, was provided as written evidence, and in the landlord's, who would simply confirm her testimony.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation in the sum of \$2,560.00 for loss of April and May, 2009 rent revenue?

Is the landlord entitled to compensation for loss and damages in the sum of \$934.39?

Is the landlord entitled to filing fee costs?

Background and Evidence

During the hearing the parties agreed that this one year fixed-term tenancy commenced on December 1, 2008, rent was \$1,280.00 due on the first of each month and that a \$640.00 deposit was paid on November 4, 2008. On March 7, 2009 the landlord received written notice from the tenants ending their tenancy effective March 31, 2009, as the result of a situation involving an ill relative.

The parties disagree as to the reason the tenants moved out. The tenants stated that the landlord failed to adequately respond to their reports that the downstairs tenant was smoking marijuana on a daily basis, causing smoke to enter their unit. The landlord testified that the tenants contacted her in February with this concern and that she immediately provided the downstairs tenant with written warning. The landlord stated that subsequently she attended at the rental unit, spoke with the male tenant and asked that he have his spouse sign a note indicating that the smoking problems continued to be a concern. The landlord stated that the male tenant told her they did not need to sign anything as the downstairs tenant had ceased smoking, however; during the hearing the female tenant testified that he stopped smoking for only two days. The landlord stated that she was never contacted again about any problem related to smoking. During the hearing the tenants presented the smoking as a primary reason for their move out of the rental unit. The male tenant testified that he did not see the note that the landlord referenced and then this tenant stated that the landlord did not attend at the rental unit to request signatures on a note.

Testimony and evidence submitted confirmed that on March 21, 2009 the tenants removed their names from the gas and hydro accounts and placed them in the landlord's name. The landlord was not immediately informed of this and only became aware of the account change at the end of March. The tenants confirmed that they moved their belongings out of the rental unit on March 21 and that they returned only once; perhaps on March 25 for approximately one hour, in order to complete some cleaning.

The landlord stated that she had sent a prospective tenant to the unit on March 22 and that this person called her to say the unit looked abandoned, that there was garbage strewn about the inside of the unit, that a note was taped to the exterior door which invited prospective tenants to enter the unit and that the door was unlocked. The landlord had a friend attend at the unit that night to inspect the unit and to lock the door. No one was present at the unit. The landlord went to the rental unit on March 23 to inspect the premises and found that the door was unlocked, that there was garbage throughout the unit and that a small sofa and broken dresser were left in the living room. The landlord locked the door to the rental unit and left.

The tenants provided written evidence agreeing to accept costs claimed by the landlord for utilities in the sum of \$162.52 and carpet cleaning in the sum of \$115.50. The tenants do not agree that the cleaning bill of \$238.87 is reasonable as it includes a minimum call out of three hours.

The parties agreed that the landlord offered to meet the tenants at the end of March for the purpose of a move-out condition inspection. The tenants refused, stating they were out of the province. The landlord testified that during March she left numerous messages on the tenant's voice mail, in an attempt to have a condition inspection completed but that the tenants did not respond or cooperate with her requests. The landlord provided photographs of the rental unit as she found it shortly after March 21.

The tenants stated they found a tenant who would move in to the rental unit on April 1, sight unseen, but that the landlord unreasonably withheld approval as the potential

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tenant had a bad credit rating. The landlord provided copies of bills for web-based and newspaper advertising that commenced March 7, 2009. The landlord stated she was able to locate a new tenant for June 1, 2009. Total advertising costs amounted to \$253.71. The tenants argued that the landlord chose some internet options that increased the costs, such as highlighting and placing the ad at the top of the page. The landlord stated that she wanted a tenant who had a good credit rating and that she had to decrease the rent in a further attempt to attract a replacement tenant.

The landlord testified that she searched for the keys and could not find them. The tenants stated that they left them on kitchen window sill.

Analysis

Section 45 of the Act provides:

- (2) A tenant may end a fixed term 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,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) 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.

I find that the tenants have breached the Act by moving out of the rental unit prior to the end of the fixed-term. The tenants made little effort to mitigate their potential loss, as provided under section 7 of the Act, which requires parties to take reasonable steps to minimize their loss. The tenants found only one possible tenant, who had a poor credit rating. I find that the landlord made efforts to mitigate her loss by immediately placing advertisements on the day she received the written notice to end the tenancy and by eventually lowering the monthly rent from \$1,280.00 to \$1,200.00. The landlord utilized web-based and newspaper advertising methods. I find that the landlord made a concerted effort to locate new tenants and is entitled to advertising costs claimed in the sum of \$253.71 and loss of rent revenue of April and May 2009 in the sum of \$2,560.00.

I have accepted the landlord's testimony, supported by photographic evidence, that at the end of March the rental unit required cleaning and that the tenant's did not return to complete all of the required cleaning. The landlord provided the tenants with one opportunity to complete a move-out condition inspection on March 31, although the tenants testified that they had cleaned the rental unit, save a few items of garbage. I accept the tenant's testimony that they returned to the rental unit for only one hour on only one occasion after March 21, 2009. I find that the photographs provided by the landlord reflect the condition of the rental unit after the tenants vacated on March 21, 2009 and that, by the tenants own testimony and based upon the balance of probabilities, one hour of cleaning was insufficient to properly clean the rental unit.



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Therefore, I find that the landlord is entitled to cleaning costs claimed in the sum of \$253.71.

I find that the landlord is entitled to key replacement costs in the sum of \$16.10 as the tenants did not make arrangements to provide the landlord with the keys at the end of the tenancy, but left them at the rental unit, with the doors unlocked.

I dismiss the claim for oven cleaner, as this is a cost that I would consider part of the cleaning fees charged.

Conclusion

I find that the Landlord has established a total monetary claim of \$3,536.67 comprised of damages and rental revenue loss and the \$50.00 fee paid for this application. I order that the Landlord retain the deposit and interest of \$641.52 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,895.15**. This order may be filed in the Provincial Court (Small Claims) 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: September 16, 2009.

Dispute Resolution Officer