



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MND, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlords, the tenant and her witness.

The tenant served the landlord with her evidence on Monday January 4, 2010, which is outside of the at least 5 day prior to the hearing requirement of Residential Tenancy Rules of Procedure. As a result, I have not considered the tenant's documentary evidence in this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 35, 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on December 31, 2010 (clarified in the hearing to be December 31, 2009 for a month to month tenancy that began on December 15, 2009 for a monthly rent of \$800.00 due on the 1st of the month with a security deposit of \$400.00 paid;
- A copy of a typewritten note from the landlord's agent who had been caring for the landlord's home between July 21, 2010 to August 11, 2010 who states that

she collected the mail everyday during that time but did not receive the tenant's notice until August 6, 2010.

- A copy of a Condition Inspection Report completed for both move in and move out conditions but unsigned by the tenant;
- A list of expenses explaining the details of the landlord's claim;
- Receipts for amounts the landlord is claiming; and
- Photographs of damage and condition of the rental unit at the end of the tenancy.

The landlord contends they received the notice to end the tenancy as outlined in the typewritten note from their agent no earlier than August 6, 2010. The tenant states that she served the landlord with the notice to end tenancy on July 31, 2010 or August 1, 2010 by putting the notice in the landlord's mailbox.

The landlord testified that they advertised in the local paper as soon as they possibly could and that they re-rented the unit for October 1, 2010.

The landlord contends that the tenant moved out by August 31, 2010 but at no point did the tenant advised the landlord they had finished the move out and was ready for an inspection but rather they meet with the tenant on September 1, 2010 and completed the inspection with the tenant and her witness.

The landlord went on to say that the tenant did not sign the Condition Inspection Report and that she did not seem happy with the landlord's assessment of the condition and that she and her witness left the unit and sat in the landlord's driveway for 4 hours and then left.

The tenant contends that she tried to get the landlord to come to complete the inspection prior to her leaving the rental unit but at no time did the landlord do so and as such the tenant did not know what the landlord's expectations were in relation to the condition to leave the unit in.

The tenant further contends that when she attended the move out inspection, the landlord was not willing to do a walk through with her but rather that he completed the Report and wouldn't let her into the unit. The tenant's witness sated that he did a walk through with the landlord and saw the condition of the unit but that the landlord was unreasonable about the damages.

Analysis

Section 45 of the *Act* requires a tenant who is ending a tenancy to provide the landlord with a notice to end the tenancy effective on a date that is, among other things, not earlier than one month after the date the landlord receives the notice.

Section 88 states a tenant may serve that notice to the landlord by leaving a copy in a mailbox where the landlord resides or where the landlord carries on business as a landlord. Section 90 states that a notice served in this manner is deemed received by the landlord 3 days after it is placed in the mailbox.

Even if I were to accept the tenant's testimony that she served the landlord by placing the notice in the mailbox on July 31, 2010 or August 1, 2010 I find the tenant failed to provide notice complied with Section 45 and is therefore responsible for the payment of rent for September 2010. I accept the landlord took all reasonable steps to re-rent the rental unit as is required under Section 7 of the *Act*.

In relation to the landlord's claim for September television charges, the landlord has provided no documentary evidence to establish the tenant was responsible for these charges during the tenancy or how much they were per month.

I acknowledge, the tenant accepted, during the hearing, she is responsible for the costs associated the dryer door latch, carpet cleaning; and the stove hood's filter. The tenant also acknowledges responsibility for the repairs to two of the doors due to knife holes and to the dryer hose, although the dryer hose was not claimed by the landlord.

The tenant disputes the landlord's claim to 29 hours of cleaning, repairing and painting. The landlord is seeking compensation for 29 hours at \$20.00. Based on the landlord's photographic evidence, I accept the rental unit required substantial cleaning and painting work and find 29 hours to be a reasonable amount of time to make the required repairs and complete cleaning.

While the landlord has claimed for the costs of photographs used in this hearing in his claim, I dismiss these costs as a choice of the landlord's in presenting his case and therefore no reclaimable from the tenant.



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While there was much discussion in the hearing about the damage to the floor, which the tenant acknowledges, the landlord has made no claim about this damage in this application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,511.08** comprised of \$800.00 rent owed; \$6.15 dryer door latch; \$7.83 stove hood filter; \$67.10 carpet cleaning; \$580.00 cleaning, repairing and painting; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,111.08**. 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 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: January 10, 2011.

Residential Tenancy Branch