



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, MNSD, & FF

Introduction

This hearing dealt with the landlord's application seeking a monetary award for damage caused to the rental unit by the tenant and for costs to advertize the rental unit due to a breach of the tenancy agreement by the tenant. The landlord is also seeking to retain the tenant's security deposit in partial satisfaction of this application.

The landlord appeared, provided documentary evidence in advance of the hearing, and provided affirmed oral testimony. The landlord testified that the tenant was served with notice of this application and hearing by registered mail on October 12, 2010 and with a copy of the documentary evidence which was posted to the door of the tenant's current residence on February 1, 2011.

Based on the documentary evidence provided by the landlord, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

I proceeded with the hearing in the absence of the tenant.

Issue(s) to be Decided

Did the tenant damage a window in the rental unit and not repair it at the end of the tenancy?

Did the tenant breach the fixed term tenancy agreement entitling the landlord to recover costs associated with advertizing the rental unit for new occupants?

Background and Evidence

The parties entered into a one year fixed term tenancy commencing February 25, 2010 and ending on February 25, 2011. The monthly rent was \$1,300.00 due on the 1st of each month and a \$650.00 security deposit was paid by the tenant on February 25,

2010. The parties did not conduct written move in and move out condition inspection reports in writing.

In June 2010 the tenant indicated to the landlord her desire to end the fixed term tenancy. The tenant stated that she had been in an accident and as a result was unable to return to work and could no longer afford the rent for the unit. The tenant agreed to cover the costs of advertizing the rental unit and a move out date for July 31, 2010 was discussed. However, the tenant subsequently decided to stay in the rental unit and did not vacate until September 30, 2010.

At the end of the tenancy it was identified that a control dial for the hot and cold water for the shower was slightly damaged and there was a scratch on one of the walls. The tenant returned and cleaned the carpets and repaired this damage. The landlord stated that she did not discover the cracked window until after the tenancy had ended and the tenant had repaired the other items identified.

The landlord stated that she contacted the tenant about the window on October 10, 2010. The tenant stated that the crack in the window had been present since the start of the tenancy. The tenant declined invitations by the landlord to view the damaged window and discuss repairs. As a result the landlord has filed this application for dispute resolution.

The landlord stated that she had the builder of the residential building inspect the window and was provided the opinion that it was not a manufacture or building defect which caused the crack in the window. The landlord did not provide any supporting documents from the inspector to support this opinion.

In support of this application the landlord included a copy of the tenancy agreement, copies of receipts for repairing the window and for advertizing the rental unit, a copy of the mutual end of the tenancy agreement and photographs of the crack in the window.

Analysis

Based on the evidence provided by the landlord and in the absence of evidence to the contrary, I find as follows:

I accept that the landlord and the tenant ended this tenancy by mutual agreement effective September 30, 2010. By agreeing to end the fixed term tenancy, the landlord waived the right to pursue the tenant for any loss experienced after September 30, 2010. Therefore, I only accept the landlord's claim for advertizing costs until September

30, 2010 in the amount of **\$264.33** and deny the additional advertizing expense claimed by the landlord in November 2010.

I do not accept the landlord's claim for the cost to repair the crack in the window of the rental unit. In the absence of written move in and move out condition inspection reports and in the absence of any additional documentary evidence about the condition of the rental unit at the start of the tenancy I find that there is insufficient evidence to determine that the tenant damaged the window.

The landlord has only provided hearsay evidence that the rental unit was undamaged at the start of the tenancy and hearsay evidence that the crack in the window was not a manufacturing defect or building defect. In addition, based on the hearsay comments made by the tenant, it appears that the crack was present from the start of the tenancy. On the balance of probabilities, and in the absence of any evidence demonstrating how the tenant damaged the window, I find it is more likely than not that the crack in the window was present from the beginning of the tenancy and was not a result of any action or negligence of the tenant. I deny the landlord's claim to repair the window.

I find that the landlord has established a total monetary claim in the amount of **\$314.33** comprised of the cost of advertizing the rental unit due to the tenant ending the fixed term tenancy and recovery of the \$50.00 filing fee paid for this application. From this sum I order that the landlord may retain this amount from the tenant's security deposit of \$650.00 leaving an outstanding amount of \$335.67 owed to the tenant.

Conclusion

The landlord's application has been granted in part and I have order that the landlord may retain the amount of **\$314.33** from the tenant's security deposit. I grant the tenant a monetary Order for the return of the remaining sum of her security deposit in the amount of **\$335.67**.

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: February 10, 2011.

Residential Tenancy Branch