



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes Landlord: MNSD, MNR, MND, FF
Tenant: MNSD

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for a monetary order for unpaid rent, damages to the rental unit, for money owed or compensation under the *Residential Tenancy Act* (the "Act") or tenancy agreement and to recover the filing fee for the Application.

The Tenant applied for a monetary order for money owed or compensation under the Act or tenancy agreement.

The Landlord's Agent and the Tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order for monetary relief?

Has the Landlord breached the Act or tenancy agreement, entitling the Tenant to an Order for monetary relief?

Background and Evidence

The tenancy began on February 1, 2010, on a one year fixed term basis, rent was \$615.00 per month, payable on the first day of each month and the Tenant paid a security deposit of \$362.46, at the beginning of the tenancy and which had been transferred from another rental unit.

The Landlord's Agent testified that the Tenant gave late notice on August 3, 2010, of her intent to vacate the rental unit, by the end of the month.

The Landlord's Agent testified that the Landlord immediately advertised the rental unit and scheduled showings.

The Landlord's Agent testified that after the Tenant left, the rental unit and the carpet had to be cleaned and that it was necessary to replace the key.

The Landlord has applied for a monetary claim of \$802.04, which includes the cleaning, the carpet cleaning, the key replacement, September rent, liquidated damages agreed to in the tenancy agreement and the filing fee, minus the security deposit.

The Tenant testified that it was necessary to break the lease due to safety concerns, that she left the rental unit clean and that she did not willingly sign the move in or move out condition inspection report.

The Tenant supplied photographs of the rental unit, purportedly showing the rental unit clean.

The Tenant is seeking a monetary claim of \$726.82, representing her security deposit, doubled.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Claim

Section 44 of the *Act* stipulates that a tenancy may end by, among other ways, the landlord providing notice in accordance with specific sections (46, 47, 48, 49, or 49.1) of the *Act* or by the tenant giving notice in accordance with Section 45 of the *Act* or by mutual agreement in writing.

If a tenant chooses to end the tenancy, Section 45 requires the tenant to provide the landlord with a notice with an effective date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that the rent is due.

I find the Tenant ended the Tenancy Agreement early in contravention of section 45 of the *Act* and is liable for rent for the month of September 2010 in the amount of **\$615.00**.

RTB Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. The Landlord claims the liquidated damages were intended to compensate them for their time and expense in advertising the rental unit as a result of the early end to tenancy by the Tenant. I find the liquidated damages clause in this instance **is enforceable**. Therefore I find the Landlord established a monetary claim for **\$250.00**.

I find the Landlord submitted evidence of the carpet cleaning in the amount \$134.40, and in the absence of evidence from the Tenant that she had the carpet cleaned as required under the *Act*, I find the Landlord established a monetary claim for **\$134.40**.

In the absence of proof, I find the Landlord submitted insufficient evidence to establish their claim for key replacement and general cleaning and I **dismiss** the Landlord's claim \$125.00.

As the Landlord was primarily successful in their application, I grant the Landlord the filing fee of **\$50.00**.

I find that the Landlord has established a total monetary claim of **\$1,049.40**, comprised of September rent in the amount of \$615.00, the liquidated damages in the amount of \$250.00, carpet cleaning in the amount of \$134.40 and the filing fee of \$50.00.

I direct the Landlord retain the security deposit of \$362.46 in partial satisfaction of the claim. I grant the Landlords an order under section 67 for the balance due of **\$686.94**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Tenant's Claim

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address *in writing*, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case I find the Landlord filed for dispute resolution within the 15 days of the tenancy's end and therefore the Tenant is not entitled to a doubling of the security deposit.

I find the Tenant's photograph evidence was inconclusive to establish the condition of the rental unit due to conflicting dates notated on the disc.

However, it is not necessary to further consider the Tenant's claim as I have allowed the Landlord's monetary claim, which exceeds the amount of the Tenant's security deposit. Therefore I **dismiss** the Tenant's application for a return of the security deposit.

Conclusion

The Landlord is entitled to retain any the security deposit and is granted a monetary order for the balance due in the amount of **\$686.94**.

The Tenant's application is dismissed.

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 14, 2011.

Residential Tenancy Branch