



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order to keep the security deposit and for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord submitted 155 photographs to the tenant and the Residential Tenancy Branch within less than 5 days before the hearing. She stated that the photographs were taken in November, and she did not provide a legitimate reason for the late submission. The tenant objected that she was caught off guard by the nature and the volume of evidence, and that she did not have sufficient time to review all the photographs and prepare a defence on time for the hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite in a single detached home. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease, starting on May 1st, 2009, at a rate of \$930.00 payable on the first of each month. At the end of the fixed term the tenancy continued month to month until the tenant moved out of the unit on October 22nd, 2010. The tenant paid a security deposit in the amount of \$465.00. Condition inspection reports were completed at the start and the end of the tenancy, however the tenant was not present during the move-out inspection.

The landlord testified that the tenant moved out of the unit on October 22nd, 2010. She stated that she attended the unit and upon seeing its' condition, she left and contacted the tenant in order to do a move out inspection together. She stated that the tenant declined and therefore the move out inspection was completed in the tenant's absence. The landlord stated the tenant did not clean and that she damaged to the unit. She referred to her photographs to support her claim for carpet and linoleum replacement, as well as extensive cleaning of the walls in all the rooms and the appliances.

In her monetary claim, the landlord submitted a loss of a month's rent for \$930.00 due to repairs. She stated that she received the tenant's original keys, but not the copies that the tenant cut for her children. For this reason the landlord claimed \$50.00 for re-keying the unit. The landlord's remaining portion of her claim for materials, repairs and damages totalled \$2082.89.

The tenant testified that despite the late submissions, the landlord's photographs were taken before she was able to clean the unit. The tenant stated that she moved out on October 22nd, cleaned on October 26th, and took 40 photographs on October 31st, 2010 which she submitted on time for the hearing.

She noted that the condition inspection report on move-in confirmed that there were pre-existing conditions with the carpet and the bathroom, for which the landlord is now holding her responsible. She stated that she did not damage the unit beyond reasonable wear and tear.

The tenant provided the landlord written notice on October 4th 2010, and stated that because she felt intimidated and frustrated with the landlord she declined to participate in the move out condition inspection. She stated that the landlord took the photographs before she cleaned the unit and altered the dates on the condition inspection report.

Analysis

The submission of late evidence is a clear violation of the Rules of Procedure. After hearing the parties' testimony, I find that the tenant would be unduly prejudiced by accepting the photographs and therefore the late evidence is not considered in my decision.

Concerning the loss of rental income, Section 52 of the *Residential Tenancy Act* states in part that in order to be effective a notice to end tenancy must be in writing. Section 45(1) of the Act states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice. On the tenant's testimony I find that the landlord did not receive proper notice and that she is entitled to recover a months' rent for November 2010 in the sum of \$930.00.

Concerning the locks, Section 25(1) of the Act provides in part that the landlord must rekey the rental unit, but only at the new tenant's request. Section 37(2) of the Act provides in part that upon vacating a rental unit, the tenant must give the landlord all the keys in possession or control of the tenant. I accept the landlord's evidence that she did not receive all the keys and accordingly had no choice but to rekey the unit. Therefore I find that the landlord is entitled to recover the cost for rekeying the unit at \$50.00.

Before a Dispute Resolution Officer can make an order under section 67 the Act, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord. I find that the photographs provided by the tenant do not persuade me that the damages claimed by the landlord were beyond reasonable wear and tear, or that they were caused by the tenant's violation of the act or tenancy agreement. Therefore the landlord's claim for cleaning and damages is dismissed.

Conclusion

The landlord has established a claim for \$980.00. Since she was partially successful, I award the landlord partial recovery of the filing for \$25.00 for a claim totalling \$1005.00. I authorize the landlord to retain the tenant's \$465.00 security deposit and pursuant to Section 67 of the Act I grant the landlord a monetary order for the balance of \$540.00.

This Order may be registered in the Small Claims Court 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: March 14, 2011.

Residential Tenancy Branch