



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, FF
 MNSD, FF

Introduction

This hearing dealt with cross applications from the landlord and tenant. The application by the landlord is for a monetary order for damage to the unit, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. The application by the tenant is for return of double the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Summary of Background and Evidence

Matters related to this tenancy were heard under file #####, July 29, 2010. In this hearing it was verified by the parties that the tenant paid reduced rent January 2010 through July 2010 at which time renovations were being completed on the rental unit. Extensive testimony was heard from the parties in regards to the renovations and overall condition of the rental unit. The tenant's application to cancel a 10 day notice was granted. The tenant's application for an Order that the Landlord make repairs and for a rent reduction was dismissed with leave to reapply.

The landlord at the start of the hearing adjusted his monetary claim to \$1600.00

There was no written tenancy agreement in place nor was there a written agreement in place for the renovation work in exchange for reduced rent. Move-in and move-out inspections were not completed.

The landlord testified that the tenant did not provide one clear months notice per the Act as the tenant gave the landlord notice November 1, 2010 that she would be vacating December 1, 2010. The landlord stated that the tenant with-held rent for the months of January and February 2010 in exchange for renovation costs but that the tenant did not complete renovations as claimed. The tenant paid reduced rent of \$750.00 for January/February 2010. The landlord stated that the tenant claimed to have painted the

rental unit during this time however after the tenant vacated the landlord discovered that the rental unit had not been painted.

The landlord stated that the tenant did not complete replacing all of the moulding in the rental unit as the transition strip for the flooring at the bathroom door was missing. The landlord also stated that there was damage to the closet door as it would not stay in the track when slid closed. The landlord stated that the tenant left the apartment in un-rentable condition, that the floors and walls were sticky and that the rental unit stank of cigarette and or marijuana smoke and could not be rented out for December 1, 2010.

The landlord is claiming the following in this application:

December rent ½ month	\$600.00
3 hours cleaning	\$60.00
Repair of moulding	\$20.00
Repair of closet	\$20.00
Unpaid rent January/February 2010	\$900.00
Total claim	\$1600.00

The tenant testified that she provided the landlord with notice to vacate at the end of October but that the notice is dated November 1, 2010 with a vacancy date of December 1, 2010; the tenant vacated November 30, 2010.

The tenant stated that during January/February 2010 she repainted the rental unit as work on renovating the bathroom was held up due to a leak. The tenant maintains that although the new paint colour is very close to the old paint colour, she did in fact repaint the entire apartment.

The tenant maintains that she smoked in the rental unit for less than 1 week and stopped as soon as she found out she was not supposed to. The tenant stated that she left the rental unit in immaculate condition and has submitted photos taken the day she vacated. The tenant stated that when she moved in to the rental unit that the transition strip was missing at the bathroom door but as the floors were level it was not required. The tenant stated that the closet door would slide off the track if closed too quickly and that it had always been like that. The tenant is requesting return of double the security deposit in her application.

Analysis

Based on the conflicting testimony of the parties I find that the landlord has not met the burden of proving that the tenant did not complete renovation work on the rental unit during the months of January/February 2010 as the tenant maintained that she

repainted the apartment during this time. Therefore the landlord's claim for with-held rent in the amount of \$900.00 is dismissed without leave to reapply.

The parties gave directly conflicting testimony on the condition of the rental unit upon vacancy and although the landlord has submitted witness statements that the rental unit smelled of smoke, it is apparent that these statements were written by the landlord, signed by the witnesses but not in the words of the witnesses. The tenant has submitted photos that were taken upon vacating the rental unit which show the unit thoroughly cleaned. I find that the landlord has not met the burden of proving that the tenant smoked in the rental unit and left the apartment uninhabitable. Therefore the landlord's claim for cleaning costs in the amount of \$60.00 is dismissed without leave to reapply.

Based on the documentary evidence and testimony I find that the tenant did not damage the rental unit by not installing the transition strip at the bathroom doorway nor did the tenant damage the closet door which the landlord stated simply needed to be adjusted. Therefore the landlord's claim for repair of moulding \$20.00 and repair of closet \$20.00 is dismissed without leave to reapply.

Based on the documentary evidence and testimony I find that the tenant did not provide the landlord with proper notice per Section 45 (1) (b) of the *Act*. Therefore the landlord is entitled to compensation in the amount of \$600.00 for unpaid rent.

I find that the landlord has established a claim for \$600 in unpaid rent.

As the landlord has had success in their claim to retain the security deposit for unpaid rent, the tenant's claim for return of the security deposit is dismissed without leave to reapply.

Neither party is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$600.00 in unpaid rent. I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's \$600.00 security deposit in full satisfaction of the claim.

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: April 14, 2010

Residential Tenancy Branch