



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent and utilities, compensation under the Act and the tenancy agreement, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

Issue(s) to be Decided

Is the Landlord entitled to the monetary compensation sought from the Tenant?

Background and Evidence

On December 6, 2009, the Landlord and Tenant entered into a written tenancy agreement for a tenancy which began on January 1, 2010. The parties agreed to a monthly rent of \$1,300.00, due on the first day of each month. The Tenant paid the Landlord a security deposit of \$650.00 on December 6, 2009. The Tenant was subletting from the Landlord and the rental unit was a condominium. The Tenant was required to pay utilities under the agreement.

During the tenancy the Tenant received three fines from the strata corporation regarding noise complaints. It appears from the evidence submitted that the Tenant was provided an opportunity each time to respond to the strata complaints prior to being fined.

In response to the third complaint, the Landlord sent the Tenant a simple email explaining the Tenant would have to vacate the rental unit. The Tenant informed the Landlord that she had not received the required Notice to End Tenancy for cause under the Act.

On September 29, 2010, the Landlord served the Tenant with the required one month Notice to End Tenancy for cause, with an effective date of October 31, 2010. The Tenant did not apply to dispute the Notice.

The Landlord testified that the Tenant did not provide her with notice of when she was vacating the rental unit, until the Landlord heard from the building manager that the Tenant wanted to move out on the last day of the month, October 31, which was a Sunday. The building manager informed the Tenant she would have to pay for his overtime to work on a Sunday for the move out. The Landlord also informed the Tenant of this charge and a security charge of \$40.00 for the move out. The Tenant had paid a \$40.00 charge when she moved into the building. The Landlord claims for these unpaid moving costs.

The Landlord and Tenant met at the rental unit on the last day of the tenancy for an outgoing condition inspection report. The meeting took place in the evening, however, the evidence of both parties was that there were several burnt out light bulbs in the rental unit at the time of the meeting.

The Tenant and her witness testified that at this final meeting the Landlord told the Tenant she would return the security deposit to the Tenant. The Tenant and her witness testified that they feel the Tenant had an agreement with the Landlord for the return of the security deposit and the Landlord has breached this agreement.

The Landlord returned to the rental unit during daylight hours and found the Tenant had not completed cleaning the stove and had not had the carpets cleaned. These could not be seen at night due to the burnt out bulbs.

The Tenant testified that the rental unit was cleaner when she left than when she moved in. She testified she had the carpets cleaned and had to do significant cleaning when she moved into the rental unit, so she did not feel she had to clean when she left the rental unit. She also testified that when she moved in there were several light bulbs burnt out which she replaced with her own light bulbs. The Tenant removed her light bulbs when she was vacating the rental unit.

The Landlord also testified that the Tenant failed to pay several hydro bills totalling \$311.38. The Tenant testified she paid all the bills that were sent to her while she was in the rental unit.

The Landlord requested an extra month of rent, for November of 2010, as the Tenant did not tell her when she was vacating the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has breached the Act and tenancy agreement by failing to pay a move out security fee, a fine from the strata, to clean the rental unit and carpets, and by failing to pay hydro bills.

I do not find the Landlord breached an oral agreement with the Tenant to return the security deposit. At the time of this conversation, the Landlord was not able to see the rental unit since the Tenant had removed the light bulbs. There is insufficient evidence that the Tenant did this intentionally to misrepresent the condition of the rental unit, nevertheless, under policy guideline #1 the Tenant was required to replace the light bulbs in the rental unit. Instead, the Tenant removed the bulbs which prevented the Landlord from properly inspecting the rental unit.

Under this same policy guideline, the Tenant was required to clean the carpets when she vacated, which she did not do. Furthermore, the Tenant had agreed in writing to pay the utility bills. Under the parole evidence rule, the written agreement cannot be waived by an oral agreement, unless both parties agree to waive the written agreement. Here the Landlord did not waive the provisions of the written agreement which required the Tenant to pay the hydro and clean the rental unit.

The Tenant should have dealt with any cleaning issues she had at the beginning of the tenancy, at the start of the tenancy. At the end of the tenancy she was required under the Act and tenancy agreement to clean the unit to a reasonable standard, regardless of the condition at the start. I find that at the end of the tenancy the Tenant did not clean the stove, or clean the carpets, and this has caused losses to the Landlord.

I find the Landlord had insufficient evidence to prove the Tenant was required to pay the overtime fee of the building manager for a Sunday move out.

I do find the Tenant was aware of and had to pay the \$40.00 security fee for moving.

I do not find the Landlord has suffered a loss of rent for one month, as the Tenant left the rental unit due to the Notice to End Tenancy, and the Landlord had prior notice the Tenant was leaving.

Lastly, I find that the Tenant had insufficient evidence to prove she paid a fine of \$100.00 to the strata, and this amount is due the Landlord.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established a total monetary claim of **\$637.17** comprised of \$311.38 for hydro, \$100.00 for the fine, \$100.79 for carpet cleaning, \$25.00 for stove cleaning, \$50.00 for security and the battery replacement, and the \$50.00 fee paid for this application.

I order that the Landlord retain **\$637.17** from the deposit held of **\$650.00** in full satisfaction of the claim and I order the Landlord to return to the Tenant the balance due of **\$12.83**.

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 11, 2011.

Residential Tenancy Branch