



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNDC, MNR, MND, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning, painting, loss of income and for the filing fee. The landlord also applied to retain the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for costs incurred to clean and repair the rental unit? Is the landlord entitled to loss of income and the filing fee?

Background and Evidence

The tenancy started on March 01, 2010 for a fixed term of one year. At the end of the fixed term the tenancy continued on a month to month basis. Rent was \$800.00 per month due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$400.00.

The tenant stated that on January 27, 2011, he informed the manager of the complex, by phone that he would be ending the tenancy on February 28, 2011. The tenant stated that the manager advised him to hand in a written notice. The manager also told him that he would not be available for a few days. On February 02, the tenant handed in his written notice.

The tenant stated that he gave the landlord his forwarding address on February 24, 2011 and moved out on February 26, 2011. On March 01, both parties conducted a move out inspection and a copy of the report was filed into evidence by the tenant. The tenant stated that he had cleaned the unit, shampooed the carpet and filled up holes in the wall that were left from putting his prints on the wall. The tenant stated that the stain on the carpet that was documented on the move out inspection report, was present at the time he moved in and was recorded on the move in inspection report. The tenant stated that despite several requests for a copy of the move in report, he was not provided with one.

The manager who attended the hearing stated that he assumed management of the complex, mid February 2011. He was unable to find a copy of the move in inspection report. He was also unable to testify about the conversation that the tenant had with the previous manager about his notice to end tenancy. The manager was also unable to provide any information about the time off of the previous manager between the dates of January 27 and February 02.

The landlord stated that he suffered a loss of income due to the inadequate notice to end tenancy. The landlord also stated that the unit did not rent for the following four months and it was due to the fact that there were other similar units in the local area that rented for less.

The landlord is claiming the following:

1.	Loss of income for March	\$800.00
2.	Carpet cleaning	\$50.00
3.	Cleaning of drapes/blinds	\$20.00
4.	General cleaning	\$72.00
5.	Painting	\$135.00
6.	Filing fee	\$50.00
	Total	\$1,127.00

The landlord stated that he filed one receipt for carpet cleaning by fax to Residential Tenancy Branch at 1-866-341-1260. Since there was no evidence on the file, I enquired and found that this fax number does not belong to the Residential Tenancy Branch. Therefore there is no documentary evidence from the landlord to support his claim.

Analysis

Section 45 of the *Residential Tenancy Act*, states 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 receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, I find that the tenant did not give the landlord adequate notice in writing to end the tenancy, thereby causing the landlord to suffer a loss of income. However, the rental unit remained vacant for four months after the tenancy ended. The reason for this is that the unit was rented at a higher rate compared to similar units in the surrounding area.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Pursuant to *Residential Tenancy Policy Guideline #3*, attempting to re-rent at a rent that is higher than market rent will not constitute mitigation. Accordingly, I find that even if the tenant had served his notice to end tenancy in a timely manner which would be two days prior to the date he served it; the unit would have remained vacant. Therefore I find that the inadequate notice was not the primary cause of the loss that landlord suffered and accordingly, I find that the tenant is not liable for this loss.

The tenant has disputed the landlord's monetary claim for cleaning and painting. In the absence of evidence to support his claim, I find that I must dismiss the balance of the landlord's claim.

Since the landlord has not proven his claim, he must bear the cost of filing this application.

Conclusion

The landlord's claim is dismissed. I order the landlord to return the security deposit to the tenant within 15 days of receiving this decision.

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: June 29, 2011.

Residential Tenancy Branch