



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in March 2010 at which time the tenant paid a \$437.50 security deposit and ended on December 31, 2010. The tenancy was set to continue for a fixed term of one year, ending on March 30, 2011 but the tenant ended the tenancy early by giving notice to the landlord.

The landlord testified that he completed a condition inspection report at the start and end of the tenancy, but did not have a copy because he believes the tenant's mother, who participated in the inspection at the end of the tenancy, took the report. The tenant stated that her mother did not take the report.

The landlord seeks to recover \$437.50 in lost income, which represents one half of one month's rent, for January 2011. The landlord testified that he showed the unit to prospective renters in December and was able to secure a new tenant for January, but the new tenant could not move in until January 15, 2011. The tenant argued that it should not have been difficult for the landlord to re-rent the unit for January 1 and stated that the landlord had told her that she would have to completely vacate the unit by December 31 or the landlord would charge her for the loss of a new tenant. The tenant testified that in late December, Shaw Cable attended at the unit to hook up cable and internet services for the incoming tenant which made her believe the new tenant would be occupying the unit on January 1. The landlord denied having told the tenant that a new tenant would be moving in on January 1 and

provided a letter from the new tenant in which she stated that her tenancy had begun on January 15.

The landlord testified that at the end of the tenancy, the tenant disposed of a significant amount of garbage by placing it next to the outdoor garbage bin. The landlord provided photographs of the garbage and testified that he paid \$700.00 plus HST to have it removed and provided a copy of the invoice for that labour. The tenant acknowledged that she left garbage beside the garbage bin, but stated that she had it packaged, not spread all about as depicted in the photographs. She further testified that the building manager had given her permission to place the garbage outside the bin because the bin was full and stated that there were several large pieces of furniture outside the bin when she brought her garbage there. The landlord denied that the building manager gave the tenant permission to place her garbage outside the bin.

The landlord testified that he had to repaint the rental unit at the end of the tenancy because the tenant's child had drawn on the walls with pen and that the ink could not be removed through cleaning. The landlord stated that he had last painted the rental unit in March 2010 just before the tenancy began. The tenant denied that the unit had been freshly painted at the start of her tenancy and while she acknowledged that her child had drawn on some of the walls, she argued that the entire unit would not have required repainting as there were not that many marks. The landlord provided an invoice showing that he paid \$750.00 plus HST to have the unit repainted at the end of the tenancy.

The landlord testified that the tenant did not adequately clean the kitchen at the end of the tenancy and that he had to pay \$120.00, which represented 4 hours of work, to have the kitchen cleaned. The tenant testified that she cleaned the kitchen at the end of the tenancy.

Analysis

The tenant was contractually obligated to continue her tenancy until March 30, 2011 and breached that obligation when she chose to end the tenancy early. I find that the landlord acted reasonably to mitigate his losses by re-renting the unit to a third party and I find that the tenant should be held contractually liable for rent for the period from January 1-14, 2011. Rent in January would have been payable at a rate of \$28.23 per day and I award the landlord \$395.22 which represents 14 days in which the tenant was legally obligated to pay rent.

The landlord was obligated to provide a bin into which tenants can place garbage accumulated as a result of normal daily activities. While I accept that the garbage bin was full when the tenant was moving, I find that the landlord had no obligation to provide a bin large enough to accommodate all of the garbage the tenant wished to dispose of while moving. In

the absence of testimony from the building manager confirming that the tenant had permission to leave garbage outside the bin, I find that she did not have that permission and therefore must be held responsible for the cost of removing the garbage. However, I am not satisfied that all of the garbage outside the bin belonged to the tenant as it seems likely that during the Christmas season other parties were also leaving garbage outside the bin once it was full and the tenant had started stacking garbage beside it. I therefore find that the tenant should be held liable for half the cost of the removal of the extra garbage and I award the landlord \$392.00 which represents half the \$700.00 bill and half the \$84.00 charged for HST.

The tenant acknowledged that her child drew on the walls of the rental unit, which I find to be damage beyond what may be characterized as reasonable wear and tear. I accept that it was necessary to paint those walls which were affected, however in the absence of a condition inspection report or photographs showing the condition of the walls, I am not satisfied that every wall had to be repainted. The landlord claimed \$840.00 which represents \$750.00 for painting and \$90.00 for HST. I find that the landlord is entitled to recover one third, or \$280.00 of the cost of repainting and I award him that sum.

I dismiss the claim for the cost of cleaning the kitchen as in the absence of photographs or a condition inspection report, I am not satisfied that the kitchen required additional cleaning.

I find that the landlord should recover the \$50.00 filing fee paid to bring his application and I award him that sum.

Conclusion

The landlord has been awarded a total of \$1,117.22. I order the landlord to retain the \$437.50 security deposit in partial satisfaction of his claim and I grant him a monetary order under section 67 for the balance of \$679.72. This order may be filed in the Small Claims Division of the Provincial 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: June 09, 2011

Residential Tenancy Branch