

Decision

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

Introduction

This hearing was convened in response to the landlord's application for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties participated and / or were represented at the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, Regulation or tenancy agreement

Background and Evidence

The subject rental unit is 1 of what are 3 bedrooms rented within a developed basement area of a house. Kitchen and bathroom facilities in the developed basement are shared between the 3 sets of tenants in the basement. The landlord resides in the upstairs portion of the house and uses kitchen and bathroom facilities located upstairs, which are separate and distinct from those used by the tenants in the basement.

Pursuant to a written tenancy agreement, the original 4 month fixed term of tenancy was from April 1 to July 31, 2011. Monthly rent of \$600.00 was payable in advance on the first day of each month, and a security deposit of \$300.00 was collected. A move-in condition inspection and report were completed with the participation of both parties.

The tenancy agreement provides that at the end of the fixed term, "the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives written notice to end the tenancy at least one clear month before the end of the term." The tenancy continued on a month-to-month basis after July 31, 2011, and by letter dated August 8, 2011, the tenant gave notice of his intent to end the tenancy effective at the close of August. The tenant paid rent to the end of August and testified that all his personal belongings had been removed from the unit by August 8, 2011.

The parties agree that together they inspected the tenant's bedroom on or about August 25, 2011, and that the bedroom was in satisfactory condition; however, a move-out

condition inspection report was not completed at that time. Subsequently, the landlord completed the move-out condition inspection report on his own and noted that the tenant had not undertaken certain cleaning required in the bathroom shared with other tenants. The landlord also claimed on the report that the tenant had not removed all of his items from the shared fridge. The landlord assessed an hour's worth of his own time to complete the aforementioned cleaning at a value of \$20.00.

At the end of tenancy the tenant did not return keys to the main door of the house or to his bedroom, and the tenant still retains these keys. Accordingly, the landlord testified that he had to replace both locks. The landlord has not submitted documentary evidence in support of his claim for \$100.00 to replace the locks, saying that he had replacement locks in his possession which had been purchased some time ago.

The landlord claims that he was unable to get a new renter until October 1, 2011, and that his efforts to advertise were temporarily delayed as a result of his short absence from town. However, evidence submitted by the tenant includes a letter from a "friend" of the tenant's who claims that on September 7, 2011 she personally met the resident who now rents the tenant's room, and further claims that the resident "said he moved in on the 5th of September 2011."

Analysis

Based on the documentary evidence and testimony of the parties, the specific aspects of the landlord's claim and my findings around each are set out below.

\$600.00: loss of rental income for September 2011. Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the manner in which the tenant gave notice to end the tenancy does not comply with the above statutory provisions. In short, the tenant did not provide adequate notice to end the tenancy.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**, and provides:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the approximate 3 week period between the time when the tenant gave written notice on August 8, 2011, and September 1, 2011 when a new tenant could have taken possession of the room, was sufficient for the landlord to commence advertising for the unit. While the landlord claims that a new renter was not found until effective October 1, 2011, there is no documentary evidence before me related to exactly when the landlord's advertisements began.

While the tenant submitted a letter from a person claiming that the tenant's former bedroom had been rented effective September 5, 2011, the author of that letter did not name the new resident and, further, she was not present at the hearing to provide affirmed testimony.

In view of all the above, I find on a balance of probabilities that the landlord has established entitlement limited to one half month's rent for October in the amount of **\$300.00*** (\$600.00 ÷ 2).

\$100.00: *cost of changing locks x 2*: Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

As noted above, the tenant did not return the 2 keys to the landlord at the end of tenancy (bedroom key and key to the main entrance of the house). I find on a balance of probabilities that the landlord did change the 2 locks in question. However, in the absence of any documentary evidence in support of the related cost claimed by the landlord, I find that the landlord has established entitlement limited to **\$30.00***.

\$20.00: cost of labour to clean shared fridge and shared bathroom. Section 37 of the Act (cited above) provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

The parties agree that the tenant's bedroom was left in satisfactory condition when inspected on or about August 25, 2011. However, there is no evidence that the parties inspected the shared bathroom or kitchen facilities at that time. In this regard, section 35 of the Act speaks to **Condition inspection: end of tenancy**, and section 36 of the Act addresses **Consequences for tenant and landlord if report requirements not met**. In short, the landlord "must offer the tenant at least 2 opportunities, as prescribed, for the inspection." Further to the absence of any evidence that the landlord offered the tenant any opportunity to complete the move-out condition inspection report, and in view of the fact that bathroom facilities and the fridge were shared between all tenants, I find there is insufficient evidence that the tenant was responsible for the cleaning allegedly required. In the result, this aspect of the landlord's claim is hereby dismissed.

\$50.00*: filing fee. As the landlord has achieved some success with his application, I find that he has established entitlement to recovery of the full filing fee.

Following from the above, I find that the landlord has established a claim of \$380.00* (\$300.00 + \$30.00 + \$50.00). I order that the landlord retain the security deposit of \$300.00 and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$80.00 (\$380.00 - \$300.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of \$80.00. Should it be necessary, this order may be served on the tenant, filed 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*.