



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlords and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost rental income; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by both parties on July 8, 2011 for a 6 month fixed term tenancy beginning on August 1, 2011 for a monthly rent of \$1,700.00 due on the 1st and 15th of each month with a security deposit of \$850.00 paid. The tenancy agreement had a clause requiring the tenant to have the carpets professionally cleaned at the end of the tenancy.

The tenant testified that she had received a call while living in the rental unit from a local bylaw enforcement officer asking if she were the owner of the house as there is a bylaw that requires the owner of the property reside in any house that has a secondary rental unit rented to tenants.

The landlord also submitted an email from the tenant dated September 4, 2011 advising the landlord of her intent to end the tenancy on October 1, 2011 and that she releases "the security deposit of \$850.00 and do not expect that it be returned to me."

The landlord testified that he began advertising in the local newspaper and has submitted a receipt that shows payment for advertising from October 13, 2011 until October 20, 2011. The landlord has also submitted into evidence a posting from Craigslist dated October 10, 2011.

The landlord also testified that he entered into an agreement on November 5, 2011 to sell the house and the new owners took possession on November 26, 2011. The landlord testified that he had received a call from a bylaw officer in early September 2011 and that he had been unaware of the requirement to reside in the property when renting out the secondary rental unit.

The landlord seeks the following compensation:

Description	Amount
2 Months lost rent	\$3,400.00
Sun Deck Cleaning	\$40.00
House Cleaning	\$50.00
Rental advertising charges	\$36.90
Water utility	\$133.70
Carpet Cleaning	\$174.66
Overpayment to tenant	\$75.00
Total	3,910.26

The landlord testified that he had paid the tenant \$40.00 at the start of the tenancy to clean the deck and she never did so he is seeking return of this amount. The tenant testified that she had indeed cleaned the deck.

The landlord testified that the rental unit required cleaning at the end of the tenancy. However, the Condition Inspection Report completed at the end of the tenancy does not record any remarks or comments about the cleanliness of the unit at the end of the tenancy.

The landlord referred to an email he submitted into evidence that had been sent to the tenant that states the "overall house cleaning was not satisfactory". The tenant acknowledged there were a few things that they had agreed required additional cleaning during the move out and that she was given time to clean them which she did.

The tenant does not dispute the amount owed to the landlord for the water utility. The landlord clarified in the hearing his claim for reimbursement of "overpayment to the tenant" is in regard to settling the underpayment of the equalized payment plan payments for gas and hydro. The landlord provided no evidence to support this claim and the tenant testified these utilities were in her name and the landlord did not contribute to their payment.

The tenant testified that she rented a carpet cleaner and cleaned the carpets herself with the exception of one bedroom in the basement. The landlord testified the tenant failed to clean any of the carpets.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As it is the landlord's responsibility to provide a rental unit in a state of decoration and repair that make it suitable for occupation in accordance with Section 32 of the *Act*, I find the fact the landlord provided the tenant with the rental unit when the deck required cleaning was a violation of the *Act*.

While the parties agreed they entered into an agreement for the tenant to clean the deck and the landlord states he paid her is outside of the rights and obligations outlined in the *Act* for either party. As such, I find the matter regarding payment for cleaning the deck is outside the jurisdiction of the *Act* and I dismiss this portion of the landlord's Application.

As the landlord has submitted a Condition Inspection Report that had been completed with the tenant in attendance and nothing is recorded regarding the cleanliness of the rental, I find the landlord has failed to establish the tenant violated Section 37 of the *Act* that requires her to leave the rental unit reasonable clean. I dismiss this portion of the landlord's Application.

I accept, by the agreement by both parties that the tenant is responsible for payment of the water utility in the amount of \$133.70. However, as the landlord has not provided any evidence and in light of the tenant's disputing testimony, I find the landlord has failed to establish that he provided an "overpayment" to the tenant for any purpose and specifically for utilities. I dismiss this portion of the landlord's Application.

In relation to carpet cleaning, as the tenancy agreement annex, signed by both parties, specifically required the tenant to have the carpets professionally cleaned at the end of the tenancy, I find the tenant is responsible to have the carpets professionally cleaned.

Despite the tenant's testimony, unsupported by any receipts, that she rented a cleaner and cleaned the carpets herself, I find the tenant violated this term in the tenancy agreement annex by failing to have the carpets cleaned by a professional cleaner. I find the tenant is therefore responsible for payment to the landlord for professional carpet cleaning, as supported by the receipt submitted by the landlord.

To the matter of lost rent and the payment of advertising the rental property, I note from the landlord's testimony that he was made aware shortly after the tenant provided notice of her intent to end the tenancy that he was contravening a local bylaw; that he entered into a sale/purchase agreement for the residential property on November 5, 2011; and

that possession of the property was transferred to the purchaser on November 26, 2011.

Section 45 of the *Act* stipulates that a tenant may end a fixed term 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 not earlier than the date specified in the tenancy agreement as the end of the tenancy.

As such, I find the earliest the tenant could end this tenancy was January 31, 2011 and I find that she is responsible for the payment of rent for the duration of this tenancy. However, Section 7(2) of the *Act* states that a landlord who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulations or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As the landlord has provided no evidence that he advertised the rental unit after the tenant provided her notice on September 4, 2011 until October 10, 2011 I find the landlord did not comply with Section 7(2) and has therefore failed to take appropriate steps to mitigate any lost revenue for the month of October, 2011. I dismiss this portion of the landlord's Application.

As to advertising the rental unit as supported by the landlord's receipt for the period of October 10 to 13, 2011 and in conjunction with the timing of the acceptance of an offer to purchase the residential property only 3 weeks later, I am not convinced the landlord had any intention of re-renting the rental unit for the month of November 2011.

In addition, I find it likely that as a result of the landlord's new understanding of the local bylaw that fact the rental unit was vacant enhanced his ability to sell the property. For these reasons I find the landlord has failed to take reasonable steps to minimize the damage or loss. Further, I find the tenant is not responsible for the payment of advertising costs. I dismiss these portions of the landlord's Application.

Conclusion

For the reasons noted above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$333.36** comprised of \$133.70 for water utilities; \$174.66 for carpet cleaning; and \$25.00 of the \$50.00 fee paid by the landlord for this application, as the landlord was only partially successful in his claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$850.00 in satisfaction of this claim, leaving a balance in the security deposit of \$516.64.

I further order that as per the tenant's testimony that she agreed to have the landlord retain the entire security deposit, the landlord does not need to return the balance of \$516.64 noted above.

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: December 16, 2011.

Residential Tenancy Branch