



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP MND MNR MNSD MNDC FF O

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant applied for return of personal property and monetary compensation. Two agents for the landlord and the tenant participated in the conference call hearing.

The landlord submitted evidence which they served on the tenant at the forwarding address that the tenant provided. The tenant stated that he did not receive the evidence because he was no longer at that address, and the landlord knew that the tenant would only be available at that address for a week. The form containing the forwarding address has no note on it that the forwarding address was only temporary, and the tenant did not give the landlord an alternate forwarding address. I found that the landlord attempted to serve the tenant with their evidence in accordance with the Act, and I admitted the landlord's evidence.

I have reviewed all 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 monetary compensation as claimed?

Is the tenant entitled to monetary compensation as claimed?

Should the landlord be ordered to return the tenant's personal property?

Background and Evidence

The tenancy began on January 1, 2011. Rent in the amount of \$775 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$387.50. On December 31,

2010, the landlord and the tenant carried out a move-in inspection and completed a condition inspection report.

On August 18, 2011 the tenant gave the landlord notice that he intended to vacate the rental unit by September 30, 2011. The landlord served the tenant with several notices of their intention to show the rental unit to prospective new renters.

On August 27, 2011 the landlord attended at the rental unit with the intention of showing it, but the front door was barricaded closed. The landlord gained entry through the sliding glass door, and discovered that the front door had been barricaded with weights, and that the tenant had a marijuana grow operation in his rental unit. The landlord called the police, who removed the marijuana plants. The landlord removed the weights, which they believed were from the weight room in the building.

On September 8, 2011, a dispute resolution officer granted the landlord an order of possession effective September 30, 2011, pursuant to the tenant's notice to vacate. On September 30, 2011, the landlord and the tenant carried out a move-out inspection. The landlord indicated several items that would require cleaning, as well as unpaid rent for September 2011. The tenant noted on the form that he disagreed with the charges.

Landlord's Application

The landlord has applied for the following monetary amounts:

- 1) \$775 for September 2011 rent, \$35 for parking and \$25 for a late payment fee;
- 2) \$170 for carpet cleaning – the tenant did not have the carpets cleaned. The landlord provided a receipt showing a charge of \$150 for carpet cleaning;
- 3) \$59.35 for drapes cleaning – the landlord provided a receipt showing \$64.65 for drapes cleaning;
- 4) \$150 for 6 hours of unit cleaning, at \$25 per hour – the tenant did not clean the unit before vacating. The landlord provided several photographs depicting the dirty condition of the rental unit.
- 5) \$533.33 for painting – the unit required a second coat of paint due to smoking and marijuana in the unit. The landlord's invoice shows a cost of \$100 to repair a hole in the living room and paint. There is no additional invoice for other painting.

The tenant acknowledged that he owed for rent, parking and the late payment fee for September 2011, but he disputed the remaining amounts. The tenant believed that the costs for carpet cleaning, drapes cleaning and unit cleaning were excessive. Further, the tenant stated that there was no cigarette or pot smoking in his unit. There were pot plants, but that was all cleaned up after the police seized the plants.

Tenant's Application

The tenant applied for monetary compensation of \$4,990 on the basis of loss of quiet enjoyment from August 18, 2011, when the tenant gave his notice to vacate, to the end of the tenancy, on September 30, 2011. The tenant stated that the landlord entered the tenant's suite numerous times every day, without proper notice, and this caused numerous problems and inconvenience for the tenant. For 17 days through August and September 2011, the landlord gave the tenant notices to enter his unit, and all of the notices were open-ended. The tenant asked the landlord not to come in on August 27, 2011, but the landlord did come in and they accused the tenant of stealing weights.

The tenant stated that the weights were his personal property, and he applied for an order that the landlord return his weights to him.

The landlord's response in regard to the tenant's monetary claim was that just because they left notices to view the suite, that does not mean that they went into the rental unit each time. In fact, the landlord only showed the suite once.

In regard to the weights, the landlord stated that the weights matched the weights in the building's weight room. The tenant provided no evidence that they were his weights.

Analysis

Upon consideration of the evidence, I find as follows.

Landlord's Application

The tenant acknowledged the amounts for September rent, parking and a late payment fee, and I grant the landlord those amounts.

I accept the evidence of the landlord that six hours of cleaning was required, and I find that the rate claimed of \$25 per hour is reasonable. I therefore grant the landlord the amount of \$150 as claimed for cleaning.

I accept that the carpet cleaning, drapes cleaning and painting were necessary. However, the landlord's application for carpet cleaning, drapes cleaning and painting contradicted the amounts set out in the invoice. Where the amounts claimed were higher than the amounts charged, for carpet cleaning and painting, I limit the landlord's claim to the amounts set out in the invoice; specifically, \$150 for carpet cleaning and \$100 for painting. Where the amount claimed is less than the amount charged, for drapes cleaning, I limit the landlord's award to the amount claimed; specifically, \$59.35 for drapes cleaning.

Tenant's Application

In regard to the tenant's claim for loss of quiet enjoyment, I find that although the landlord issued notices of entry that were not in compliance with section 29 of the Act, the tenant did not provide sufficient evidence that he in fact suffered any loss of quiet enjoyment. I therefore dismiss the tenant's application for monetary compensation.

In regard to the tenant's application for return of personal property, I find that the tenant did not provide sufficient evidence that the weights in question did belong to him. I therefore dismiss that portion of the tenant's application.

Filing Fees

As the landlord's claim was successful, they are entitled to recovery of the \$50 filing fee for the cost of their application.

As the tenant's application was not successful, he is not entitled to recovery of his filing fee for the cost of his application.

Conclusion

The tenant's application is dismissed.

The landlord is entitled to \$1344.35. I order that the landlord retain the security deposit of \$387.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$956.85. This order may be 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*.

Dated: November 30, 2011.

Residential Tenancy Branch