



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD

Introduction

This hearing dealt with an application by the landlord seeking 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. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and loss of income and unpaid utilities?

Is the landlord entitled to a monetary order for the costs of cleaning and painting the rental unit?

Background and Evidence

The tenancy began on or about May 1, 2010 and ended on October 10, 2011. Rent in the amount of \$795.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$400.00.

The landlord gave the following testimony; the tenants vacated the unit on October 10, 2011 pursuant to a decision rendered by a different dispute resolution officer, offered to do a “walk thru” of the unit with the tenant’s on the condition that the tenant’s pay the amount awarded in that hearing, the tenants refused to pay and left without doing the “walk thru”, and left the unit with some minor damage and untidy.

The tenant's gave the following testimony; had done a move in condition inspection report with the previous owner, the present owner only offered one opportunity for the move out inspection and only on the condition that they "pay up" the outstanding rent before entering, didn't have the money to pay so a move out condition inspection was not conducted, and the landlord would not allow tenant's to pick up the bed and pillows that was still in the unit.

Analysis

First claim- The landlords are seeking loss of income for the month of October 2011 in the amount of \$795.00. The tenants moved out on October 10, 2011 and the landlords were unable to rent the unit for that month. The tenant's do not dispute this portion of the landlords claim. I am satisfied that the landlords have proven this portion of their claim and I therefore award the landlords \$795.00.

Second Claim- The landlords are seeking \$134.30 of unpaid utilities. The tenant's disputed the amount proposed. The landlords are relying on the tenancy agreement provided for this hearing to support their claim. However, the documentation provided by the landlords was not helpful. As the landlords are the applicant's they bear the burden of proof and as such have not provided a complete and valid copy of the tenancy agreement. It's unclear as to what the breakdown of cost of utilities was agreed to and with such uncertainty I am unable to make a clear finding, as such I dismiss this portion of the landlords claim.

Third Claim- The landlords are seeking \$1064.00 for the painting of the rental unit. The landlords provided a "quote" of what it would cost to paint the rental unit but not an actual receipt. The landlords have not provided sufficient evidence to show that they have suffered an actual monetary loss nor did they provide enough evidence that the work had actually been done. I dismiss this portion of the landlord's application.

Fourth Claim- The landlords are seeking \$14.00 for removal of garbage from the property. The landlords provided a receipt for this cost and this was not disputed by the

tenant's. I am satisfied the landlords have proven this portion of their claim and I award the landlords \$14.00.

In this application the landlord has sought to retain the security deposit in partial satisfaction of the claim. A move in condition inspection was conducted; a move out condition inspection was not. Section 35(2) requires a landlord to offer at least two opportunities for the move in and move out condition inspection report, if this is not done the landlord extinguishes his right to make claim to the security deposit. Both parties agree that only one opportunity was given.

However, since the landlords have the security deposit in trust and are entitled to some monetary compensation in this claim, I will apply the security deposit towards that claim to the benefit of the tenant to **offset** some of the monetary award to the landlord as directed in Section 72(2)(b) of the Act.

As for the monetary order, I find that the landlord has established a claim for \$795.00 in unpaid rent and \$14.00 for garbage removal. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$400.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$459.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$459.00. The landlord may retain the security deposit.

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: January 04, 2012.

Residential Tenancy Branch