



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, damages or loss under the Act and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damages or loss under the Act?

Is the landlord entitled to keep all or part of the security deposit paid by the tenant?

Background and Evidence

The parties agree the tenancy began on April 15, 2011, and during the tenancy the parties entered into a fixed term tenancy agreement that was to end on May 31, 2012. Rent in the amount of \$1,350.00 was payable on the first of each month. A security deposit of \$675.00 was paid by the tenant. The tenancy ended on November 30, 2011.

On August 1, 2011, the parties agree there was an addendum to the tenancy agreement, which the landlord reduced the financial responsibility of the tenant on the fixed term agreement. The tenant was to provide the landlord with two month notice to end tenancy and the landlord would not seek further compensation. Filed in evidence is copy of the addendum.

The landlord testified that the tenant sent him a text message on September 28, 2011, giving two months notice to end tenancy. The landlord stated that text messaging is not an approved form for the tenant to provide written notice and he did not receive proper written notice until October 26, 2011, therefore the two months notice would end on December 31, 2011. The landlord states he is seeking compensation for December 2011, rent. Filed in evidence is copy of the letter dated October 26, 2011.

The tenant testified that on September 28, 2011, she sent the landlord a text message giving the landlord two month notice that tenancy would be ending. The tenant stated the landlord acknowledged receipt of that written notice and responded that he would like to come over and take current pictures. The tenant states that the landlord did come over on the weekend and took pictures of the rental unit. Filed in evidence is a copy of the landlord's text message to the tenant.

The tenant further testified the landlord started to advertise the rental unit for rent on October 6, 2011. Filed in evidence is a copy of the advertisement posted on October 6, 2011.

The tenant testified that it was on October 26, 2011, when the landlord first informed her that the text message of September 28, 2011, was not sufficient and at his request she provided him the hand written letter dated October 26, 2011, but states the notice of September 28, 2011 was accepted and acted on by the landlord.

The landlord testified that he is seeking to be compensated for the hydro he was required to pay for the month of December 2011, in the amount of \$127.68, as this is an amount that he would not have had to pay if the tenant provided proper notice.

The tenant testified that amount is high, and questions whether the rental unit was empty for December 2011. The tenant states she should not have to pay any hydro costs as she provided the landlord with sufficient notice to end tenancy.

The landlord testified that a move-out inspection was scheduled for November 7, 2011, and he was late due to a family illness.

The landlord testified that when he was at the rental unit, the situation became heated and he no longer felt safe, so he left and the move-out inspection was not completed with the tenant.

The tenant testified that she was frustrated by the landlord being late and when the landlord arrived, her husband and the landlord had a few word. However, her husband had left the rental unit and she tried to do the move-out inspection with the landlord.

The tenant testified that it became heated and the landlord left the premises without doing the inspection. The tenant further stated the landlord did not provide another other opportunity to complete the move-out inspection.

The landlord testified that the tenant did not clean the inside or outside of the windows and it took him four hours to clean the windows. The landlord is seeking to be compensated at the rate of \$25.00 per hour for a total of \$100.00.

The tenant testified that she cleaned the inside and outside of the window's at the end of tenancy.

The landlord testified that he is seeking compensation for a fire extinguisher that he purchased at the tenants request and the tenant took the fire extinguisher at the end of tenancy.

The tenant testified that the landlord never provided her a fire extinguisher when she made that request, and her spouse purchased one for her.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The parties agree the tenant provided the landlord with a text message on September 28, 2011, which gave the landlord notice that the tenant was end tenancy on November 30, 2011.

The evidence of the landlord was that he did not accept the text message as an approved form of written notice that the tenancy was ending. However, the landlord did acknowledge receipt of the text message by responding to the tenant that he would like to come and take pictures of the rental unit. Text messaging was an obvious form of communication between the parties.

The landlord went to the rental unit on the following weekend and took pictures and on October 6, 2011, the landlord posted on a website the rental unit for rent.

The landlord argues text messaging is not an approved form of written notice. In this case, the evidence is very clear that the landlord had received the written text message and was responding to that message. If the evidence of the landlord was he did not receive the text message, I would find the tenant did not provide proper written notice. However, that was not the situation in this case.

Further, if the landlord was not accepting the text as written notice, the landlord could have informed the tenant on September 28, 2011, that he would like the notice provided in a different form. However, the landlord did not request a different form of written notice until later in October 2011.

I find the actions of the landlord's clearly demonstrate the he had notice on September 28, 2011 and was acting on that notice. I find the tenant was entitled to rely on the conduct of the landlord.

As a result, I find the landlord was given written notice on September 28, 2011, that the tenancy was ending on November 30, 2011. Therefore, I find the landlord is not entitled to be compensated for December 2011, rent.

As I have found the tenant was not responsible for December 2011, rent the landlord is not entitled to compensation for the hydro bill for December 2011. Therefore, the landlord request for compensation of the hydro bill is dismissed.

The landlord has filed documentary evidence for advertising the rental unit during the month of November 2011 and December 2011. As I have found the landlord was provided sufficient written notice the tenant is not responsible to pay the cost of advertising the rental unit. The landlord's request for compensation of the advertising cost is dismissed.

The evidence of the parties was a move-out inspection was scheduled and that the landlord was late for the inspection. When the landlord appeared at the rental property, the situation became heated and the landlord left the property. A move-out inspection was not completed and the tenant was not provided another opportunity to schedule the move-out inspection.

The landlord testified that the tenant did not clean the inside or outside of the windows of the rental unit at the end of tenancy and the landlord spent four hours cleaning the windows. The tenant testified she cleaned the windows of the rental unit at the end of tenancy.

The policy guidelines states, the tenant is responsible for cleaning the inside of the windows at the end of tenancy. The landlord is responsible for cleaning the outside windows at regular intervals. However, in the absence of a parties completing a move-out inspection report, I am unable to determine the condition the windows were in on the day tenancy ended. Therefore, the landlord's request for compensation for cleaning the windows is dismissed.

The evidence of the landlord was that he is seeking compensation for a fire extinguisher taken by the tenant. The evidence of the tenant was the landlord never supplied her with a fire extinguisher. The landlord has failed to prove that he has suffered a loss, there was no proof that he purchased a fire extinguisher for the rental unit during this tenancy and there was no proof to prove that he replaced the fire extinguisher. Therefore, the landlord's request for compensation for the fire extinguisher is dismissed.

The application of the landlord states he is requesting compensation for a fridge filter, filed in evidence is a receipt. However, no testimony was given by either party. The documentary evidence of the tenant was the light that indicates the filter needs to be changed was not on when she vacated the rental unit. In the absence of the parties completing a move-out inspection, I am unable to determine the condition of the filter on the day tenancy ended. Therefore, the landlord's request for compensation for replacing the fridge filter is dismissed.

As I have dismissed the landlords application for compensation for unpaid rent and compensation for damages. The landlord is not entitled to recover the cost of the filing the application.

The landlord must return to the tenant the security deposit paid by the tenant. I grant the tenant a monetary order in the amount of \$675.00.

Conclusion

The landlord's application is dismissed. The tenant is granted a monetary order in the amount of \$675.00.

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: March 6, 2012.

Residential Tenancy Branch