



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, compensation for damage or loss and recovery of the filing fee and an order to keep all or part of the deposits held by the Landlord.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent, compensation for damage or loss and recovery of the filing fee and an order to keep all or part of the deposits held by the Landlord?

Background and Evidence

The parties agree that they had a tenancy agreement which commenced July 15, 2011 and ended on November 17, 2011 when the Tenant moved out. The parties agree that the rent was \$600.00 per month, due on the first of the month. The parties agree that the Tenant paid a \$300.00 security deposit and a \$100.00 key deposit when the tenancy commenced. The Landlord provided a copy of the tenancy agreement into evidence. The tenancy agreement states that a \$25.00 fee is payable if the rent is late. The parties agree that they performed a move in inspection on July 08, 2011 and a move out inspection on November 17, 2011. The Landlord provided a copy of the move in and move out inspection reports signed by the Tenant into evidence. The Tenant provided her written forwarding address to the Landlord on the move out inspection report on November 17, 2011. The Landlord did not return the Tenant's security deposit or key deposit when the tenancy ended. The Landlord filed an Application for dispute resolution on November 23, 2011.

The parties agree that the Landlord served a 10 Day Notice to End Tenancy on the Tenant on November 07, 2011 as the Tenant failed to pay rent for November 2011. The parties agree that the Tenant moved out on November 17, 2011, but did not pay the outstanding rent. The Landlord is requesting the unpaid rent for November 2011, \$600.00 and the late fee of \$25.00.

The Tenant stated that they had initially given the Landlord one month's verbal notice that they would be moving out due to noise issues from the tenant below their suite. The Tenant stated that she was missing work due to a lack of sleep due to the noise and she did not pay the rent or apply for dispute resolution. The Tenant stated that the Landlord did evict the tenant below but before the eviction the tenant below had been loud and even threw garbage on her deck. The Tenant stated that the Landlord gave her the 10 Day Notice when she failed to pay the rent for November 2011.

The Landlord stated that in response to a verbal noise complaint from the Tenant he gave a One Month Notice for Cause to the tenant below to evict him, and when the tenant below failed to pay rent he also gave him a 10 Day Notice to End Tenancy and was able to evict him. The Landlord stated that he had an alternate rental unit for the Tenant to use prior to the eviction of the tenant below, however, she declined to accept it. The Landlord stated that the Tenant failed to pay her rent for November 2011, but remained in the rental unit as a result he had to issue her a 10 Day Notice to End Tenancy.

The Landlord stated that the Tenant was not cooperative about showing the rental unit to prospective tenants, so he could not show it until after she moved out. The Landlord stated that he performed the move out inspection with the Tenant on November 17, 2011 and that he noticed the Tenant had not fully cleaned the rental unit and carpets; she or her friends had broken a door before vacating the rental unit; and a curtain rod was missing from a bedroom. The Landlord stated that he had to take a key away from the Tenant's alleged friends on November 05, 2011, as the Tenant had not told him when she was planning to starting moving out, she had not booked the elevator for any moving of items, and the Tenant was not present when the non-tenants were accessing the building. The Landlord stated that the door to the rental unit was fine until the evening of November 05, 2011, when he believes the Tenant's friends came back and broke the door to the rental unit trying to force it open as the key had been taken away from them. The Landlord stated that he had to get cleaning and repairs done after the Tenant moved out, and he did not find new tenants for December 2011. The Landlord is claiming \$30.00 for the door repair and hanging of curtain rod with drapes. The Landlord is claiming \$40.00 for cleaning for four hours, \$24.61 for carpet cleaning solution, and \$3.00 for other cleaning supplies. The Landlord is claiming \$4.00 for

purchase of a curtain rod and \$1.68 for stove burner covers not replaced. The Landlord provided receipts into evidence for each of the items claimed, as well as photographs of the condition of the rental unit in evidence. The Landlord stated that the move-out inspection report was completed with the Tenant and signed by the Tenant, with no changes made. The Landlord is also claiming \$600.00 for rental income loss for December 2011.

The Tenant stated that she had started to move out in early November, however, on November 05, 2011 the Landlord hindered the move out by taking keys away from her friends as they were not on the tenancy agreement. The Tenant denies being responsible for the broken door and says it may have been broken even before she moved in. The Tenant stated that she cleaned the rental unit before moving out and used her own carpet cleaning system on the carpets. The Tenant stated that the rental unit and walls were difficult to keep clean due to humidity. The Tenant stated that the Landlord added "needs cleaning" to the move out inspection report after she signed it. The Tenant stated that the bathtub had a permanent green stain that would not come out. The Tenant stated that she did not use the oven much so she did not clean it.

The Landlord is requesting \$1,328.29 for unpaid rent, rental income loss, cleaning and repairs, and reimbursement of the filing fee paid for this Application.

The Tenant disagrees with the Landlord's claim as she feels the rental unit was clean and in satisfactory condition at the time of move out. The Tenant has not made an application for dispute resolution but requests that the Landlord return her security deposit and key deposit.

Analysis

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

I find that the Landlord is entitled to the \$25.00 late fee, as allowed by the tenancy agreement and the Act, because the Tenant failed to pay rent to the Landlord on November 01, 2011 when it was due. The Tenant's testimony confirms that she failed to pay rent for November and was still residing in the rental unit when rent was due. I grant the Landlord a monetary order for \$25.00.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. I find that the Landlord is entitled to the unpaid rent of \$600.00 for November 2011, and grant the Landlord a monetary order for this amount.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Tenant) pay for the loss the Applicant (the Landlord) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent (Tenant) in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant (the Landlord) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 (2) of the Act states:

Leaving the rental unit at the end of a tenancy

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
- (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.

Residential Policy Guideline 1 states the following:

At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets

after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

The tenant must wipe or vacuum baseboards and baseboard heaters to remove dust and dirt.

The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

As part of the evidence submissions the Landlord provided photographs showing the condition of the rental unit and receipts for the actual cost of the cleaning and repairs in the rental unit. The Tenant provided no photographic or documented evidence. I find that the photographic evidence depicts many areas throughout the rental unit that are dirty, which a tenant could reasonably be expected to clean. As a result, I find that the Tenant's attempt to clean the rental unit was not sufficient and needed to be redone in several areas of the rental unit. I find that the Landlord's claim for \$40.00 for four hours of cleaning of the rental unit and carpets is reasonable and supported by a written record of hours and work done on November 21, 2011. I find that the Landlord's claim for \$30.00 for door repair and re-hanging of curtain rod and drapes is reasonable and supported by a receipt dated November 19, 2011. I grant the Landlord a monetary order for \$70.00 for these costs.

I find that the Landlord's claim for cleaning supplies, purchase of curtain rod, burner covers, and carpet cleaning solution are not supported by contemporaneous receipts, as the only receipts provided by the Landlord are either undated or have dates that pre-date the move-out inspection and end of tenancy by either several weeks or months. As a result the Landlord has not provided sufficient evidence to support their claim for these costs and these amounts are dismissed.

I find that the Landlord did not provide sufficient evidence of attempts to re-rent the rental unit. There was no evidence provided of advertising done or dates of showings to prospective tenants. The Landlord provided no evidence of any dates or incidents where the Tenant attempted to hinder his access to show the rental unit. The Landlord's evidence shows that cleaning and repairs to the rental unit took only a few hours and he has not sufficiently proven that this affected the re-rental of the unit for December. Due to the lack of evidence of the Landlord's attempts to mitigate, I cannot find that the Landlord is entitled to any rental income loss as claimed. As a result I dismiss the Landlord's claim for rental income loss for December 2011.

As the Landlord has in part succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I grant the Landlord monetary order for \$745.00, which represents unpaid rent for November 2011 (\$600.00), late rent fee (\$25.00), door repair and re-hanging of curtain rod drapes (\$30.00), cleaning of the rental unit and carpet (\$40.00), and the filing fee (\$50.00).

The Landlord filed his Application for dispute resolution within 15 days of the Tenant providing a written forwarding address. The Tenant did not file an application for return of her security deposit or for return of her key deposit. The parties confirmed that the Landlord holds a \$300.00 security deposit and a \$100.00 key deposit. As I have found that the Tenant owes the Landlord for unpaid rent and compensation for damages and losses, and the filing fee, I order that the Landlord retain the deposits which total \$400.00 in partial satisfaction of the claim. I grant the Landlord a monetary order pursuant to section 67 for the balance of the amount owing to the Landlord is **\$345.00**.

Conclusion

I grant the Landlord's claim in part for unpaid rent, compensation for damage and loss, and the filing fee, however, the Landlord's claim for cleaning supplies, purchase of curtain rod, burner covers, carpet cleaning solution, and rental income loss for December 2011 is dismissed.

I find that the Landlord is entitled to \$745.00, as I have ordered that the Landlord retain the deposits totaling \$400.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$345.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: February 29, 2012.

Residential Tenancy Branch