



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied for recovery of the security deposit and further monetary compensation. The landlord applied for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord, the tenant and an agent for the tenant participated in the conference call hearing.

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?

Background and Evidence

The tenancy began on January 1, 2011. The rental unit is a furnished bachelor unit in the basement of a house. A note in the tenancy agreement indicates as follows: "Landlord has one spare room/storage off the hallway/entrance and using it [illegible] a proper notice."

Rent in the amount of \$650 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 \$325. The tenant moved out the rental unit on November 6, 2011.

Landlord's Evidence

The tenant was aware from the beginning of the tenancy that the landlord intended to rent out the spare room in the basement to another tenant. On November 1, 2011 the landlord rented the spare room to a new tenant. On November 2, 2011 the landlord confirmed to the tenant in an email that the new tenant would be sharing the bath and kitchen with the tenant, and the landlord would deduct \$50 from the tenant's rent as compensation. In the email, the landlord also wrote that the new tenant did not have laundry included, "so please do not talk about your rental agreement with the new tenant."

On November 4, 2011 the tenant emailed the landlord to complain about the new tenant and his guest making excessive noise late at night and smoking. The landlord followed up on the tenant's complaint.

On November 6, 2011 the landlord discovered that the tenant had moved out without notice. On November 12, 2011 the tenant came and returned the key, and demanded return of his November rent as well as return of the security deposit. The landlord told the tenant that they first needed to do a move-out inspection. The tenant did not cooperate with a move-out inspection. On November 24, 2011 the tenant gave the landlord his written forwarding address and reiterated his demand for return of November rent and the security deposit.

The landlord has claimed the following monetary amounts:

- 1) \$550 for December 2011 rent – the landlord deducted \$50 per month from the rent for November and December 2011
- 2) \$82.50 for 5.5 hours of cleaning, at \$15 per hour – the tenant left the rental unit very messy
- 3) \$83.98 for pillow and bed linens – the landlord provided linens as part of the furnishings, and the linens were missing when the tenant moved out

Tenant's Evidence

The tenant did not know that he had to give up his bachelor suite to the new tenant, and did not give permission to the landlord to move in another tenant to share with him. The new tenant had full access to the tenant's space.

The tenant did not have an opportunity to do cleaning, because the other tenant had already moved in. The tenant left the linens when he moved out. There is no way it would have taken five and a half hours to clean the very small bachelor suite.

The tenant has claimed recovery of his rent for November 2011 as well return of his security deposit.

Analysis

Upon consideration of the relevant evidence, I find as follows.

I find that the evidence of the tenant was more credible than that of the landlord. The landlord's own evidence shows that she did not inform the tenant until November 2, 2011 that he would be expected to share his kitchen and bathroom with the new tenant, after that tenant had already moved in. Additionally, the landlord asked the tenant to participate in withholding information from the new tenant about laundry arrangements, which demonstrates a degree of duplicity on the part of the landlord.

I find that by forcing the tenant to share nearly all of his rental unit with another tenant, the landlord egregiously and fundamentally breached the tenancy agreement, such that the tenancy ended on November 1, 2011 and the tenant was entitled to move out without notice. The tenant is entitled to recovery of all of his rent for November 2011, and the landlord is not entitled to any rent for December 2011.

It would have been impossible for the landlord and tenant to conduct a move-out inspection after the other tenant had moved in and began using the rental space and furnishings. It is also impossible for the landlord to establish that the tenant would be responsible for the cleaning done after the new tenant moved in.

The landlord has not provided sufficient evidence to establish that the tenant removed the linens as claimed, and therefore the landlord is not entitled to the amount claimed for replacement of linens.

The landlord is not entitled to retain any portion of the security deposit and must therefore return it to the tenant.

As the landlord's claim not successful, she is not entitled to recovery of the \$50 filing fee for the cost of her application. The tenant's claim was successful, and he is therefore entitled to recovery of his \$50 filing fee.

Conclusion

The landlord's application is dismissed.

I grant the tenant an order under section 67 for the balance due of \$1025. 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: March 1, 2012.

Residential Tenancy Branch