



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord and the tenant participated in the in-person hearing.

Preliminary Issues

Evidentiary Issues

The landlord submitted documentary and photographic evidence which he stated he had also served on the tenant. The tenant provided a non-committal response as to whether he had or had not received the landlord's evidence, but he was not opposed the landlord's evidence being admitted. I admitted the landlord's evidence.

The tenant stated that he had submitted extensive evidence to the Residential Tenancy Branch and also served that evidence on the landlord by email. The landlord stated that he had received some emails from the tenant shortly after the landlord filed his application in December 2011; however, it was not clear that those emails were evidence for this proceeding. None of the tenant's emails were forwarded to me for consideration as evidence in this proceeding, as email is not an acceptable method of service for evidence under the *Residential Tenancy Act*. The tenant is familiar with the dispute resolution process, and he did not request an adjournment or other remedy regarding his evidence. I therefore proceeded with the hearing in the absence of the tenant's email evidence.

Amendment to Landlord's Application

The landlord requested an amendment to his application to include a claim for \$90 for cleaning. The cleaning amount was included in the landlord's evidence, and the tenant was prepared to respond to the claim for cleaning. The tenant did not oppose the amendment to include this amount. I therefore allowed the amendment.

Jurisdiction

The tenant raised the issue of whether I had jurisdiction to hear this matter, based on the question of whether or not the applicant is the landlord. The tenant referred to the definition of “landlord” under section 49 of the Act. The tenant stated that under section 49(1)(a)(ii), a landlord must hold at least 50 percent interest in the rental unit, and in this case the applicant did not hold a 50 percent interest. The landlord responded that he is in fact a 50 percent owner, and he is the landlord. The tenant did not provide further evidence to support his claim that the applicant was not the landlord.

I informed the parties that the definition of landlord under section 49 was applicable specifically to a landlord who seeks to end a tenancy because they or a close family member intends to occupy the rental unit, and the definition of a landlord under section 1 is a broader definition. I stated that the matter before me in this hearing did not involve a dispute under section 49, and I was satisfied that the applicant landlord met the definition of “landlord” under section 1. I determined that I had jurisdiction and proceeded with the hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began in approximately October 2010. Rent in the amount of \$595 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 \$295. No evidence was submitted to establish that a move-in inspection was carried out at the beginning of the tenancy.

A dispute resolution hearing was convened on September 29, 2011, and a decision resulting from that hearing was issued on October 12, 2011. In that decision, the Dispute Resolution Officer upheld a notice to end tenancy for landlord’s use. In another dispute resolution hearing convened on November 14, 2011, the landlord applied for and was granted an order of possession pursuant to the notice to end tenancy for landlord’s use.

The landlord served the order of possession on the tenant, but the tenant did not vacate the rental unit. The landlord obtained a writ of possession and engaged the services of a bailiff to evict the tenant. The eviction was completed on November 30, 2011.

Landlord's Evidence

The landlord has claimed the following monetary amounts:

1. \$120 for Supreme Court filing costs and \$2,424.13 for bailiff services to have the tenant evicted – the tenant did not comply with the order of possession, so the landlord had to have the bailiff evict the tenant.
2. \$375 for cleaning – the tenant did not clean the rental unit, and extensive cleaning was required. The landlord submitted photographs depicting the dirty condition of the rental unit, and provided an invoice which indicates that 28 hours of work was done, at a rate of \$18.50 per hour, to do general cleaning, remove garbage, patch and paint the bathroom area, and install a new countertop and backsplash. The invoice is dated December 13, 2011. The landlord stated in the hearing that he was reducing his claim to \$375 for this work, in acknowledgement that there may have been some normal wear and tear.
3. \$123.20 for carpet cleaning – the tenant did not have the carpets professionally cleaned. The invoice for carpet cleaning indicates “2 rms” and is dated December 12, 2011. The landlord submitted one page of the tenancy agreement and highlighted the clause addressing carpets, which states that if the carpets are professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy. The landlord also provided evidence that the carpets had been professionally cleaned on July 30, 2010. The landlord acknowledged that the carpet is old, but stated that it is serviceable.
4. \$90 for removal of abandoned furniture – the tenant left behind some furniture that the landlord hauled away to the dump. The dump fee was \$46, and the gas costs were approximately \$12. The landlord acknowledged that the furniture in question had previously belonged to the landlord's agent, the caretaker in the building; however, the landlord believed that this furniture was given to the tenant, not loaned. The landlord did not provide receipts for these amounts.
5. \$650 for lost revenue for December 2011 – the landlord's son was going to move into the rental unit as a tenant, but because of the delays caused by evicting the tenant and carrying out cleaning, the landlord's son was unable to move into the rental unit until January 2012. When he moved in, the landlord's son began paying \$650 per month in rent. The landlord did not provide a copy of the tenancy agreement for his son, rental receipts or any other evidence to confirm the amount of rent his son began paying.

The landlord stated that he previously received an order allowing him to retain \$50 of the security deposit, so \$245 of the security deposit remains available.

Tenant's response

The tenant disputed each of the items claimed by the landlord:

1. Supreme Court filing fee and bailiff fees – the landlord is not entitled to these fees because the eviction was illegal. The landlord is not the landlord under section 49 of the Act, and therefore the order of possession that the landlord received under section 49 was an illegal order.
2. Cleaning – the tenant acknowledged that the unit would have required a maximum of 2.8 hours of cleaning. However, the landlord did not do a move-out inspection with the tenant, so the landlord's claim is extinguished.
3. Carpet cleaning – the carpet is 13 square yards in the living room. The carpet was dirty at the outset of the tenancy, and it was old and threadbare.
4. Abandoned furniture – the furniture was on loan from the caretaker, and did not belong to the tenant.
5. Lost revenue – there is no basis for the lost revenue claim, because the cleaning could have been done on December 1st. Furthermore, the tenant's rent was \$595, not \$650.

Analysis

Upon consideration of the evidence, I find as follows.

Supreme Court Filing Fee and Bailiff Fees

I find that the landlord is entitled to these amounts. A previous Dispute Resolution Officer determined that the notice to end tenancy for landlord's use was valid, and a second Dispute Resolution Officer granted the order of possession based on the validity of the notice. As I explained to the landlord and the tenant in the hearing, I do not have the ability to overrule those previous decisions. The tenant was served with the order of possession and did not comply with it, so the landlord had to resort to the services of a bailiff to evict the tenant.

Cleaning

I find the landlord is not entitled to the full amount claimed for cleaning. The landlord did not submit a move-in inspection report to verify the condition of the rental unit at the

outset of the tenancy, so there is no basis to compare the condition of items such as the area of the bathroom that was patched and painted or the countertop and backsplash that were replaced. However, the landlord's photographic evidence does show areas of the rental unit that would have required cleaning, and the tenant acknowledged that 2.8 hours of cleaning could have been done. I therefore grant the landlord \$51.80 for 2.8 hours of cleaning, at \$18.50 per hour.

Carpet Cleaning

The landlord's evidence shows that the carpets were professionally cleaned on July 30, 2010, which was approximately two months before this tenancy began. The landlord did not provide a copy of a move-in inspection report for this tenancy or other evidence that the rental unit had not been occupied by another tenant between July 30, 2010 and the beginning of this tenancy. I therefore find that the landlord is not entitled to the amount claimed for carpet cleaning.

Abandoned Furniture

I accept the tenant's testimony as credible that the furniture in question did not belong to him but was on loan from the landlord's agent. Furthermore, the landlord did not provide clear evidence of the exact amounts incurred to dispose of the furniture. I therefore find that the landlord is not entitled to the amount claimed for furniture disposal.

Lost Revenue

The landlord did not provide sufficient evidence to confirm the amount of rent his son began paying. The landlord claimed lost revenue in an amount greater than the monthly rent paid by the tenant. Additionally, the landlord's invoices for carpet cleaning and cleaning are dated December 12 and 13, 2011, which indicates that the landlord waited nearly two weeks after the tenant was evicted before doing cleaning and repairs. For these reasons, I therefore find that the landlord is not entitled to the amount claimed for lost revenue.

Security Deposit and Extinguishment

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. When a landlord extinguishes their claim against the security deposit for damage to the property, the landlord may still apply for compensation for the costs of the damages. Furthermore, section 38 of the Act still allows the landlord to apply to keep the security deposit in partial compensation of amounts not related to damage to the property, such as lost

revenue or bailiff fees. That is the case here, and therefore the landlord was entitled to apply to retain the security deposit.

Filing Fee

As the landlord's application was partially successful, I find he is entitled to partial recovery of his filing fee, in the amount of \$25.

Conclusion

The landlord is entitled to \$120 for Supreme Court filing costs; \$2,424.13 for bailiff services; \$51.80 for 2.8 hours of cleaning, at \$18.50 per hour; and \$25 for partial recovery of the filing fee. The remainder of the landlord's application is dismissed.

I order that the landlord retain the balance of the security deposit in the amount of \$245 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,375.93. 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 13, 2012.

Residential Tenancy Branch