



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement for unpaid rent, for damage to the rental unit, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

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.

I have reviewed all oral and written 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 from the Tenant?

Background and Evidence

This tenancy began on November 1, 2004. At the start of the tenancy the Tenant paid a security deposit of \$237.50, to the owner of the building at that time. During the course of the tenancy, the ownership of the property changed to the current Landlord. The Tenant vacated the rental unit on November 30, 2011, and at the end of the tenancy the monthly rent was \$560.00, due on the first day of the month.

The Tenant was assisted in finding a different rental unit by the local health authority. The Tenant gave the Landlord a written notice to end the tenancy on November 7, 2011, and acknowledged in this notice that the notice was late and the Tenant would be responsible for December rent if the rental unit was not rented during this time.

The Agent for the Landlord testified that there was a new renter in the rental unit for the last week of December 2011.

At the end of the tenancy the Agent for the Landlord spoke to the Tenant about performing an outgoing condition inspection report. The Agent testified that the Tenant refused to do an outgoing condition inspection report. The Tenant did not deny this.

The Agent for the Landlord testified that the shower, toilet and three window blinds had to be replaced, plus additional cleaning was required, due to the condition these were left in by the Tenant. The Landlord claims \$560.00 for all of December 2011 rent, \$289.00 to install a new shower stall, \$100.00 for a new toilet, \$250.00 for window blinds, \$200.00 for cleaning and \$50.00 for the filing fee for the Application, all totalling \$1,449.00 claimed.

The Tenant testified that he was a smoker and smoked in the rental unit for the seven years he was in the rental unit.

The Tenant testified he was unable to clean the shower or the blinds for the last year of the tenancy. He testified that the rest of the rental unit was left very clean.

The Tenant disputed that he owes the Landlord any rent for December, as he testified he felt he had given the Landlord enough notice to get out of paying the rent. The Tenant testified he did not remember signing the late notice to end the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has breached sections 37 and 45 of the Act.

By failing to leave the rental unit reasonably clean and undamaged the Tenant has breached section 37 of the Act. Based on his own admissions, I find that the Tenant did not clean the shower stall or window blinds for at least the last year of his tenancy. I find that by not cleaning the shower stall or the window blinds for the last year of the tenancy, the Tenant could not have left leave these reasonably clean.

The Tenant also failed to give the Landlord a one month notice to end the tenancy, as required under section 45 of the Act. If the Tenant had wanted to end the tenancy on November 30, 2011, then the last day the Tenant could have given the Landlord the required Notice to End Tenancy was October 31, 2011. The Tenant failed to do this.

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.

I find the breaches by the Tenant have caused the Landlord to suffer a loss. However, the Landlord did not provide receipts or invoices for the cost of replacing the shower, toilet or window blinds to prove the actual amount of the loss. Therefore, I am unable to award the amounts claimed for these items to the Landlord.

As the Tenant admitted to not cleaning these items for at least a year, I do allow the Landlord the amount claimed for cleaning of \$200.00.

I also allow the Landlord \$420.00 for 75% of the rent due for December of 2011. The Landlord was able to mitigate its loss for one week in December, and therefore I award the approximate equivalent of three weeks of rent to the Landlord.

Therefore, I find that the Landlord has established a total monetary claim of **\$670.00**, comprised of \$420.00 in rent for December, \$200.00 for cleaning and the \$50.00 fee paid for this application.

I order that the Landlord may retain the deposit and interest of **\$245.91** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$424.09**.

This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as provided under the Act, and 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 14, 2012.

Residential Tenancy Branch