



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit – Section 67;
3. A Monetary Order for compensation for loss – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on September 1, 2008 with a fixed term ending June 30, 2012. Rent in the amount of \$1,250.00 is 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 \$625.00. No move-in inspection was completed. On November 30, 2011, the Tenants provided notice to end the tenancy for December 31, 2011 and moved out of the unit on December 17, 2011.

The Landlord states that although the Tenant gave notice to end the tenancy, the Tenants failed to pay rent for December and claims \$1,250.00 in unpaid rent. The

Tenants state that from the onset of the tenancy, repairs were needed to the unit and that after several requests for repairs to be made went unanswered until late October 2011 when the Landlord informed the Tenants that the unit was on a wait list for repairs to be made within a week. The Tenants state that these repairs were never done. The Tenants sent a letter dated October 29, 2011 to the Landlord informing the Landlord that if repairs were not completed at the unit, the Tenants would be ending the tenancy. The Landlord states it is unknown whether the Tenants' complaints were received by anyone representing the Landlord and that the Landlord's representative at the time did not inform the Landlord that there were any issues with the unit. The Landlord states that this representative no longer works for the Landlord. The Landlord argues that the Tenants should have made an application for dispute resolution seeking an order for repairs instead of breaking the lease and failing to pay December rent.

The Landlord states that the Tenants left the unit unclean at the end of the tenancy and claims \$78.40 for carpet cleaning and \$36.00 for general cleaning. The Tenants state that the unit was unclean at move-in and that the carpets were not cleaned. The Tenants state that the carpets were cleaned by the Tenants themselves during the tenancy.

The Landlord states that the Tenants paid their rent late in November 2011 claim a late fee of \$2000. The Landlord also claims a late fee of \$20.00 for unpaid December rent. The Landlord states that the Tenants have a \$5.00 credit with the Landlord. The Tenants state that the Landlord was provided with post dated cheques, including the cheque for November rent but that the Landlord lost those cheques. The Tenant states that as soon as the Landlord notified the Tenants that it did not have the November cheque, the Tenant provided the Landlord with a cheque. As a result, the Tenant states that they are not responsible for a late rent payment for November 2011. It is noted that the tenancy agreement provides for a \$20.00 charge if rent is paid late.

The Landlord claims \$300.00 for liquidated damages, noted to be provided for in the tenancy agreement and \$1,240.00 for lost rental income for January 2012. The

Tenants argue that the liquidated damages amount is not payable as the Landlord failed to repair the unit and that the Tenants ended the tenancy for this lack of repairs.

Analysis

Given the undisputed evidence that December rent was not paid but accepting that the unit was in need of repairs from the onset of the tenancy and that the Landlord failed to make those repairs over the period of the tenancy, which I note to have been six months, I find that it would be reasonable to reduce the Landlord's monetary entitlement by \$100.00 for each month of the tenancy and that the Landlord is therefore entitled to the amount of **\$625.00**.

Where a tenancy agreement includes a liquidated damages clause and the Landlord claims an amount pursuant to this clause, the Landlord can no longer claim lost rental income. Accordingly, I dismiss the Landlord's claim for lost rental income. Although the Tenant argues that the liquidated damages amount is not payable due to the Landlord's inaction on repairs, I accept the Landlord's argument that the Tenant did have opportunity to make an application for dispute resolution instead of ending the lease to be a sound argument and I therefore find that the Landlord is entitled to the liquidated damages amount of **\$300.00**.

Given the undisputed evidence that the unit, including the carpet, was not clean at move-in and that no move-in inspection was completed, I find that the Landlord has not substantiated a claim for cleaning the unit and rug and I dismiss this part of the claim.

Given the undisputed evidence of the Tenant that the Landlord lost the rent cheque for November 2011, I find that the Landlord has failed to substantiate that the Tenant was late with November rent and I dismiss the Landlord's claim for a late fee. Given the above finding for a reduced amount of rent for December, I dismiss the Landlord's claim for a December late fee.

As the Landlord's application has met with limited success, I decline to make an award for recovery of the filing fee.

The Landlord is entitled to **\$925.00** and holds a security deposit of \$625.00 and a \$5.00 credit. Setting this credit of **\$5.00** and deposit plus interest of **\$625.00** off the entitlement leaves **\$295.00** owing by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$625.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$295.00**. If necessary, 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 19, 2012.

Residential Tenancy Branch