



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MNR, MND, 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. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for damages to the unit – 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.

Preliminary Matter

At the onset of the Hearing, the Landlord confirmed that the Tenant moved out of the unit on February 14, 2012 and withdraws the claim for an Order of Possession.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy began on November 2, 2011 and ended on February 14, 2012 pursuant to a Notice to End Tenancy for non-payment of rent (the “Notice”). A move-in inspection was completed. The Notice was served on the Tenant on February 5, 2012 by posting the Notice on the door, with a stated effective date of February 15, 2012. Rent in the amount of \$925.00 was originally payable in

advance on the first day of each month however rent for the months November and December 2011 and January 2012 was reduced to \$875.00. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$462.50. The Tenants did not pay rent for February 2012. A walkthrough inspection was conducted on February 14, 2012 but the Landlord did not have the inspection report for the walkthrough, did not complete the report and did not provide a copy to the Tenant. The Landlord rented the unit to new tenants commencing March 1, 2012 with monthly rent at \$850.00.

The Landlord claims unpaid February rent of **\$925.00**.

The Landlord states that although no discussions were held with the Tenant in relation to a repayment of the total reduction of rent for the period noted above, of \$150.00, the Landlord believed that this amount would be recouped from the Tenant at a later date. The Landlord claims **\$150.00** for the rent reduction. The Tenant states that nothing was discussed about any future repayment of the reduction.

The Landlord states that the Tenant failed to give any notice for their move-out and claims lost rental income of **\$925.00**. The Tenant states that the Landlord is not entitled to lost rental income and that they moved out by the date required by the Notice.

The Landlord states that following the walk-through on February 14, 2012, the Tenant agreed that the Landlord would retain the full amount of the security deposit for cleaning to the unit. The Landlord provided a copy of this agreement. The Tenant states that the unit was clean for the walkthrough and that the Landlord agreed to accept the security deposit in full settlement of the February 2012 rent owing. The Tenant states however that the Landlord informed the Tenant that the Landlord could not legally accept the security deposit for the rent owing so the Tenant should sign the security deposit against cleaning costs instead. The Landlord states that the Tenant's evidence is "close to the truth" but that while the unit was tidy, the unit did require cleaning, including cleaning to the fridge and stove.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move-out of the unit by that date. Given the undisputed evidence that the Tenant moved out of the unit by the effective date of the Notice, I find that the Tenant was not required to provide the Landlord with any notice of moving out of the unit. I find therefore that the Landlord has failed to establish that the Tenant caused any loss of rental income by not providing notice of moving out. I dismiss this part of the Landlord's claim.

Based on the Landlord's evidence that no discussions were held with the Tenant in relation to a future repayment of the rent reduction, I find that there was no agreement for such a repayment and that the Landlord has therefore not established an entitlement to recovery of the rent reduction. I dismiss this part of the Landlord's claim.

Section 35 of the Act provides that at the end of a tenancy, a landlord and tenant must together inspect the condition of a rental unit and that the Landlord must complete a condition inspection report and give the tenant a copy of that report. Section 36 of the Act provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Based on undisputed evidence of the Parties, I find that the Landlord failed to complete the move-out inspection report and provide a copy to the Tenant and that the Landlord's right to claim against the security deposit is ***extinguished.***

Section 38 of the Act provides that a landlord may retain an amount from a security deposit if at the end of the tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability of the Tenant. This section further provides that the

right of a landlord to retain part of a security deposit at the end of a tenancy, where the tenant agrees in writing that the landlord may retain the amount to pay a liability, does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage has been **extinguished** under section 36.

Accepting the undisputed evidence that no condition inspection report was completed by the Landlord and provided to the Tenant, I find that the Landlord has no right to retain the security deposit against cleaning costs even with the Tenant's written agreement to do so. Given the Landlord's confirmation that the Parties originally agreed that the Landlord would retain the security deposit in full settlement of the rent owing for February 2012, and accepting that this agreement would have been in writing had the Landlord not required that the Tenant sign the agreement on cleaning costs, I find that the original agreement is valid, and that the Landlord is entitled to retain the security deposit of \$462.50 in full settlement of February 2012 rent. Given this agreement, I further find that the Landlord has failed to establish an entitlement to any more money for this rental period and I dismiss this part of the Landlord's claim.

As none of the Landlord's claims have been successful, I dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed.

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 2, 2012.

Residential Tenancy Branch