



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order

The hearing was conducted via teleconference and was attended by one of the landlord's and both tenants.

At the outset of the hearing the landlord corrected the value of the rent sought for compensation from \$785.00 to \$750.00, for a total claim of \$820.00. The landlord also sought to amend the Application to retain the security deposit in addition to the \$820.00 for a total claim of \$1,195.00.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for carpet cleaning; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on February 11, 2011 for a 6 month fixed term tenancy beginning on March 1, 2011 and converting to a month to month tenancy on September 1, 2011 for a monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$375.00 paid.

The parties agree on December 8, 2011 the tenants gave the landlord a notice to end the tenancy effective on December 31, 2011. The landlord seeks rent for the month of January 2012 for this short notice.

The tenants provided documentary evidence that even though the landlord started advertising prior to the end of the tenancy the advertisements showed the available date for rental as February 1, 2012. The tenants submit they should not be held responsible for rent for January 2012 if the landlord had no intention of renting the unit for that month.

The landlord testified that she had to advertise for February 2012 availability because she did not know what condition the rental unit would be in. She further testified that this is her usual practice when a tenancy ends in case she needs to do major work to a rental unit she advertises it for the month following one month after the tenancy but if the new renters want an earlier date she will consider it if the unit is in good shape.

The landlord also seeks compensation for carpet cleaning because she believes tenants are responsible for cleaning the carpets when they end a tenancy. The landlord confirmed there is no requirement in the tenancy agreement to have the carpets cleaned.

The landlord submitted a copy of a Condition Inspection Report saying that at the start of the tenancy the carpet was stained and at the end of the tenancy the carpet needed cleaning. The landlord testified the carpet needed cleaning because the tenants had a dog. The landlord testified she hired a professional to complete the cleaning and it cost \$75.00 but she did not provide a copy of the receipt in her evidence.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Residential Tenancy Policy Guideline 1 states that tenants are responsible for carpet cleaning for tenancies over a year or in the case of shorter tenancies, if they smoked or had pets. As such, I accept the tenants were responsible for cleaning the carpets.

I accept that as a result of the tenant's failure to clean the carpets the landlord may have incurred a loss, however as the landlord failed to provide receipts for the carpet cleaning I find the landlord has failed to provide sufficient evidence to establish that she suffered a loss and/or the value of that loss. For these reasons, I find the landlord has failed to establish the two of the four points noted above in relation to the carpet cleaning and I dismiss this portion of the landlord's Application.

Section 45 of the *Act* requires a tenant who seeks to end a tenancy to provide the landlord notice to end the tenancy on a date that is not earlier than one month after the date the landlord receives the notice. As such, as the tenants were not compliant with Section 45 when they issued their notice, I find the tenants are responsible for the payment of rent for January 2012.

However, Section 7 of the Act stipulates that if a landlord makes a claim for compensation for damage or loss from the tenant's non-compliance with the Act, the landlord must do whatever is reasonable to minimize the damage or loss.

From the testimony of both parties, particularly the landlords, I find the landlord's normal practice is to exclude the month immediately following a tenancy as an available month for a new tenancy and in particular in this case the landlord did not attempt at all to rent the unit for January 2012.

As such, I find the landlord took absolutely no steps to minimize any loss for the tenant's breach of Section 45, contrary to Section 7 and I therefore dismiss the portion of the landlord's claim seeking compensation for lost revenue.

Conclusion

As I have dismissed the landlord's full claim, I find the tenants are entitled to the return of their security deposit in full and I grant a monetary order in the amount of **\$375.00**.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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