



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, damage to the rental unit, and unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite in a single detached home. Pursuant to a written agreement, the fixed term tenancy started on January 1, 2012 and was to end on August 31 2012. The rent was \$825.00 per month and the tenant paid a security deposit of \$350.00. Condition inspection reports were completed at the start and the end of the tenancy but they were not provided in the landlord's package of evidence.

D.G., the landlord's agent, testified that he received the tenant's notice to end tenancy on January 25, 2012 and that the tenant left on January 29, 2012. He stated that he although the ads were placed immediately to re-rent the unit, he could not find new tenants and therefore decided to sell the property. He said that the house sold approximately the end of March 2012.

D.G. stated that there was pre-existing damage to the door subject to the landlord's claim; however he said that he discovered that it had been ripped from its hinges. He also stated that he added items such as curtains rods at the tenant's request, which were not terms of the agreement.

The landlord submitted a monetary claim as follows:

- 2 months' rent @ \$825.00/mth:	\$1650.00
- 1 broken door:	\$ 150.00
- Move out inspection by agent:	\$ 56.00
- Extra cost to install curtains :	\$ 136.85
- 3 suite showings by agent:	\$ 157.50
- Total:	\$2150.35

The tenant stated that after moving in she brought several issues with the unit to the landlord's attention, such as; the toilet seat; weather stripping; window drafts; I leaky kitchen sink; and the need for curtain rods. She stated that she became disappointed with these issues, and supported her reasons for moving out by the landlord's consent. In her documentary evidence, the tenant provided a copy of an email dated January 4, 2012 wherein the landlord stated that if the issues are not addressed to the tenant's satisfaction, the landlord agreed to break the lease. The tenant provided another email in which the landlord stated that March 1, 2012 would be an agreeable date to end the tenancy. The tenant stated that based on these electronic exchanges, she moved out

on January 29, 2012, and that she would not have moved out if the landlord had indicated that she intended to pursue a monetary claim for breaking the lease.

Concerning the landlord's claim for curtains, the tenant provided a copy of an email showing that the landlord volunteered to accommodate the tenant, and that there was no indication that the tenant would be charged back. The tenant also said that the damaged door was a pre-existing condition, and that it literally came off its hinges. She pointed to the move-out condition inspection report provided in her evidence. She stated that the landlord's contractor was present during the inspection; that the damaged door is not mentioned; and that it states that the unit was left in the same condition as when the move-in inspection was done.

Analysis

Section 15 of the Act states in part that; a landlord must not charge a person anything for investigating an applicant's suitability as a tenant. Further, showing the rental unit is necessary as part of doing business as a landlord; it would have had to occur at the end of the tenancy and I dismiss this aspect of the landlord's claim.

Under the Act it is a landlord's statutory obligation to complete condition inspection reports; this is not a chargeable service to the tenant and I also dismiss this aspect of the landlord's claim.

Under the Act, reimbursement pertains to emergency repairs. The landlord's claim for curtains cannot be characterized as an emergency repair. The landlord provided no evidence of a written agreement for the installation of curtains at the tenant's expense and I dismiss this portion of the landlord's claim.

Section 45(2) of the Act states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The tenant

provided evidence in an email dated January 4, 2012 that the landlord allowed the tenant to leave before the end of the fixed term. This however did not mean that the tenant could leave without giving the landlord a proper one month's notice. The landlord's subsequent emails to the tenant suggest that she would prefer the tenant to leave by March 1, 2012, which would have made up a month's notice and given the landlord time to find new tenants and mitigate her loss. In addition to the landlord allowing the tenant to move out before the end of the fixed term, the tenant stated that there were problems with the condition of the unit that further prompted her to end the tenancy prematurely. A remedy for the tenant would be to seek assistance through making an application for dispute resolution if the landlord failed to resolve the issues. In this matter the tenant chose to end the tenancy. For these reasons I find that the landlord is entitled to recover the loss of rental income for one month.

Sections 23 and 35 of the Act place the onus to complete the condition inspection reports on the landlord. Since the landlord's evidence in this matter was not supported by these reports, I cannot support the claim that the damage or loss claimed by the landlord concerning the door resulted in damage or loss beyond reasonable wear and tear, particularly when the evidence established that there was already pre-existing damage. The tenant provided a copy of the move-out report; it did not address a broken door and therefore I dismiss this aspect of the landlord's claim.

Conclusion

The landlord established a claim of \$825.00. I authorize the landlord to retain the tenants' \$350.00 security deposit for a balance owing of \$475.00. Since the landlord was partially successful, I award the landlord \$25.00 towards partial recovery of the filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$500.00.

This Order may be registered 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: April 18, 2012.

Residential Tenancy Branch