



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR POB MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord and both tenants participated in the teleconference hearing.

The tenants had moved out of the rental unit by the time of the hearing. I therefore dismissed the portions of the landlord's claim regarding an order of possession.

The landlord failed to serve two pages of her evidence on the tenants. I therefore did not admit or consider those two pages of evidence. The landlord sought to claim additional amounts for cleaning, a fridge crisper and the washer, but the information regarding those additional amounts was set out on the two pages of evidence that the landlord did not serve on the tenants. I therefore did not amend the application to include those items.

I have reviewed all testimony and other admissible evidence. 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 as claimed?

Background and Evidence

The tenancy began on July 19, 2011 as a fixed-term tenancy to end on July 31, 2012. There were originally three tenants in the rental unit. Monthly rent was \$1800. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$900. The landlord and tenants carried out a move-in inspection on August 23, 2011.

On November 8, 2011 the landlord received a letter from the city stating that it had come to their attention that the rental unit was an illegal suite. On November 18, 2011 a bylaw inspector came and inspected the rental unit. The landlord was not present for that inspection.

In January 2012 the tenants only paid \$1200 of their rent. On January 8, 2012 one of the three tenants informed the landlord in writing that he was vacating the unit. On March 31, 2012 the remaining two tenants did a move-out inspection with the landlord, and signed the inspection report agreeing that the landlord may retain \$400 of the security deposit for carpet cleaning, unpaid utilities and door repair. The tenancy ended on March 31, 2012.

Landlord's Evidence

The landlord did not receive any paperwork from the city regarding the inspection of the suite. The landlord told the bylaw officer he must deal with the landlord, not the tenants.

The tenants did not pay \$600 of the rent for January 2012. On January 22, 2012, the landlord agreed to amend the tenancy agreement to reduce the rent to \$1200 starting February 1, 2012. The tenants failed to pay \$100 of the rent for March 2012. On March 19, 2012 the tenants gave one month's written notice to vacate the rental unit. The landlord did a move-out inspection with the tenants on March 31, 2012 and the remaining two tenants moved out on that date.

The landlord has claimed the following amounts:

- 1) \$600 for January 2012 rent;
- 2) \$100 for March 2012 rent;
- 3) \$1200 for April 2012 lost revenue;
- 4) \$200 in outstanding utilities;
- 5) \$150 for carpet cleaning;
- 6) \$150 for damage to an interior door – the tenants agreed to \$50 for this repair, but the actual cost was \$150;
- 7) \$50 for changing the lock, as the tenants failed to return a key.

The landlord did not provide evidence regarding any attempts she made to re-rent the unit for April 2012.

Tenants' Response

On November 8, 2011, the city bylaw officer inspected the rental unit and deemed it an illegal suite. The bylaw officer told the tenants they would have to move out. In December 2011, the tenants told the landlord what the bylaw officer said.

In January 2012 one tenant moved out, and the landlord and the remaining two tenants had a verbal agreement that the tenants would not have to pay the outstanding \$600 for January 2012. The landlord agreed to a deduction of \$100 in rent for March 2012 because the stove was removed from the rental unit. The tenants did not receive the landlord's letter until March 19, 2012, even though the document is dated January 22, 2012.

The tenants agreed at the move-out inspection that the landlord could keep \$400. The landlord then added amounts without the tenants' agreement.

The tenants acknowledged that the landlord could retain \$400 from the security deposit, as set out in the move-out inspection report, as well as \$50 for changing the locks.

Analysis

Upon consideration of the evidence, I find as follows.

I accept the evidence of the landlord that she expected the tenants to pay \$600 for January 2012, and that she did not agree to lower the rent to \$1200 until February 2012. The landlord is therefore entitled to this amount. The tenants did not provide sufficient evidence that the landlord agreed to a further deduction of \$100 for March 2012, and I find the landlord is therefore entitled to \$100 for March 2012.

In regard to the bylaw issue, the tenants' argument that that they could breach their lease because the bylaw officer told them they would have to move out is not valid. The tenants would have to have waited until the landlord received a letter from the city, and then served the tenants with a notice to end tenancy for cause.

The landlord did not provide sufficient evidence that she took reasonable steps to re-rent the unit for April 2012, and I therefore find she is not entitled to lost revenue for April 2012.

I find that the landlord is entitled to \$400 for unpaid utilities, carpet cleaning and door repair, as agreed to by the tenants on the move-out inspection report. The landlord did not provide sufficient evidence to support an increase in her claim for the door repairs.

The landlord is also entitled to \$50 for changing the locks.

As the landlord's claim was mostly successful, I find that she is also entitled to recovery of the \$50 filing fee for the cost of her application.

Conclusion

The landlord is entitled to \$1200. I order that the landlord retain the security deposit of \$900 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$300. 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: May 3, 2012.

Residential Tenancy Branch