



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for unpaid rent / damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement for this tenancy which began on June 1, 2010. Monthly rent of \$850.00 was payable in advance on the first day of each month, and a security deposit of \$500.00 was collected. An additional \$200.00 was payable each month for utilities. A move-in condition inspection report was not completed.

By letter dated January 28, 2012, the tenant gave notice to end the tenancy effective March 1, 2012. The tenant sent her letter to the landlord by way of registered mail. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, as well as a copy of information provided on the Canada Post website to the effect that the letter was "successfully delivered" on January 31, 2012. Thereafter, the tenant vacated the unit on March 1, 2012. A move-out condition inspection report was not completed.

The landlord testified that the unit was simultaneously advertised for rent and for sale after the tenancy ended. Ultimately, no new renters ever moved into the unit, the unit was sold and the purchaser took possession effective April 1, 2012.

Analysis

Based on the documentary evidence and testimony, the particular aspects of the landlord's application and my findings around each are set out below.

\$1,050.00: unpaid rent for March 2012. Section 45 of the Act addresses Tenant's notice, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

I find that the tenant over held the unit by vacating on March 1, 2012 rather than on February 29, 2012. However, I note that the landlord was not entirely committed to finding new renters and was also advertising the unit for sale. In the result, I find that the landlord has established entitlement to unpaid rent / loss of rental income limited to **\$191.94***, which is calculated to be the equivalent of 1 week's worth of rent as follows:

$\$850.00 \text{ (monthly rent)} \div 31 \text{ (\# of days in March)} = \$27.42 \text{ (daily rent)}$

$\$27.42 \text{ (daily rent)} \times 7 \text{ (\# of days in 1 week)} = \underline{\$191.94} \text{ (entitlement).}$

\$5,599.59: removal of carpet & floor coverings / failure to replace. The parties presented varying accounts of what agreements & understandings had been reached between them in regard to removal of the carpets and the undertaking of certain work with the exposed flooring. However, there was no dispute that the carpet which was removed was in excess of 20 years old. Residential Tenancy Policy Guideline # 37 provides that the "useful life" of carpet is generally 10 years. In any event, the landlord

testified that this cost was never actually incurred. Following from all of the foregoing, this aspect of the application is hereby dismissed.

\$639.48: removal of blinds & window coverings / failure to replace. There are no comparative results of move-in and move-out condition inspection reports in evidence, and the landlord testified that this cost was never actually incurred. In the result, this aspect of the application is hereby dismissed.

\$460.85: theft of fridge. In the absence of sufficient evidence that the tenant stole a fridge from the unit, this aspect of the application is hereby dismissed.

\$560.00: unrepaired water damage to lower suite caused by unapproved appliance install. As previously stated, there are no comparative results of move-in and move-out condition inspection reports in evidence. Further, the landlord testified that this cost was never actually incurred. Accordingly, this aspect of the application is hereby dismissed.

\$50.00: filing fee. As the landlord has achieved a limited measure of success with his application, I find that he has established entitlement to partial recovery of the filing fee in the limited amount of \$25.00*.

Total entitlement: \$216.94* (\$191.94 + \$25.00).

Conclusion

Following from all of the above, I order that the landlord retain \$216.94 from the security deposit of \$500.00, and I order the landlord to return the balance of the security deposit to the tenant in the amount of \$283.06 (\$500.00 - \$216.94).

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 12, 2012.

Residential Tenancy Branch