



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent; loss of rent, cleaning and repairs; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid and/or loss of rent from the tenant?
2. Has the landlord established an entitlement to recover cleaning, painting and repair costs from the tenant?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The one year fixed term tenancy commenced October 1, 2011 and the tenant paid a \$750.00 security deposit. The tenant was required to pay rent of \$1,499.00 on the 1st day of every month. On May 8, 2012 the landlord received notice from the tenant that the tenant intended to vacate the rental unit May 31, 2012. The landlord responded in writing May 10, 2012 by advising the tenant he continued to be liable for rent but that the landlord would attempt to find new tenants. The tenant proceeded to vacate the rental unit May 31, 2012.

The landlord did not prepare move-in or move-out inspection reports. The tenant verbally provided his new address to the landlord at the end of May 2012.

The landlord applied for compensation of \$3,920.00 but did not provide a detailed breakdown. Rather, during the hearing the landlord submitted that he suffered a loss of rent for June and July 2012 as the unit was re-rented starting August 1, 2012 for the same amount of rent. The landlord also submitted two receipts: one for painting and

repairs dated August 10, 2012 in the amount of \$543.20 and the other dated August 12, 2012 for cleaning in the amount of \$246.40. The total of two months of rent, painting and repairs, and cleaning is: \$3,787.60.

The landlord submitted that he had to make repairs to the sliding door. The landlord also submitted that it was necessary to re-paint because there were scratches on the walls. The landlord explained that the walls were last painted 3 or 4 years prior. After the unit was re-painted the landlord had the unit professionally cleaned. The landlord is seeking to recover full cost of painting from the tenant.

The landlord also submitted that he incurred advertising costs but did not include any receipts for advertising. The landlord testified that advertising commenced in the newspaper as soon as he received the tenant's notice to end tenancy and then on-line.

The tenant submitted that he gave notice to end the tenancy as he lost his job and could no longer afford the rent. The tenant tried to find replacement tenants but was unsuccessful so he returned possession of the unit to the landlord in an effort to reduce losses.

The tenant was of the position he left the unit clean and he did not damage the unit. Other than a few small holes for a clock the tenant did not damage the walls. Further, the sliding door was damaged prior to his tenancy. The tenant questioned the dates on the receipts considering his tenancy ended May 31, 2012.

Upon enquiry, the tenant acknowledged there was one showing of the unit to a prospective tenant during May 2012.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the tenant was bound by a fixed term tenancy which he breached by ending the tenancy before the expiry date. Where a tenant breaches a fixed term tenancy the tenant may be held liable for the loss of rent for the remainder of the term, provided the landlord takes reasonable steps to minimize the loss of rent.

Based upon the landlord's undisputed testimony and the tenant's acknowledgement there was a showing during the remainder of his tenancy, I accept that the landlord took reasonable steps to re-rent the unit. In the absence of evidence to the contrary I accept that the unit was re-rented starting August 1, 2012. Therefore, I award the landlord loss of rent for June and July 2012 in the amount of \$2,998.00.

With respect to damage, painting and cleaning I was provided disputed verbal testimony. The landlord bears the burden of proof and in the absence of move-in or move-out inspection reports; photographs, or other corroborating evidence I find the landlord has not established the tenant is responsible for damaging the unit or leaving it unclean. The receipts dated in mid-August 2012 do not satisfy me that the work performed more than two months after the tenancy ended was necessary due to the actions of the tenant. Furthermore, landlords are expected to repaint at regular intervals and Residential Tenancy Policy Guideline 40 provides that interior paint has an average useful life of 4 years. Thus, I find it likely the existing paint was at or near the end of its useful life.

In light of the above, I dismiss the landlord's claims for damage, painting and cleaning against the tenant.

Given the landlord's limited success in this claim, I award the landlord \$32.00 of the filing fee he paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the loss of rent.

Based upon the above findings and awards, I provide the landlord with a Monetary Order to serve upon the tenant, calculated as follows:

| | |
|------------------------|-----------------|
| Unpaid/Loss of rent | \$ 2,998.00 |
| Filing fee | 32.00 |
| Less: security deposit | <u>(750.00)</u> |

Monetary Order

\$ 2,280.00

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,280.00 to serve upon the tenant and enforce as necessary.

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: October 24, 2012.

Residential Tenancy Branch