



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MMNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38;
4. A Monetary Order for damage to the unit – Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on May 15, 2012 on a fixed term to June 30, 2014. The tenancy ended on August 31, 2012. The Tenant failed to pay August 2012 rent of \$1,600.00. The Tenant damaged doors and a wall of the unit resulting in a cost owed to the Landlord of \$536.00 for replacement and repairs. The Tenant owes \$50.00 to the Landlord for two NSF charges.

The Landlord states that the Tenant moved belonging into the unit without booking the facilities for the move and that the Landlord was fined \$500.00 for this move by the

Strata. The Landlord provided a copy of the letter from the Strata in relation to the fine and it is noted that the letter indicates that the Landlord may dispute the fine by responding to the Strata within two weeks. This letter further provided that following the receipt of any submissions that the Landlord may provide, the complaint may be dismissed or otherwise dealt with. The Landlord states that he contacted the Strata and told them to speak to the Tenant. The Landlord states that this fine has not been paid by the Landlord.

The Tenant states that the incident complained of by the Strata involved the moving in of a couple of boxes and plants the evening before the scheduled move-in the next day. The Tenant states that prior to moving in these items, the concierge for the building advised the Tenant that these items could be moved into her unit that evening in advance of the scheduled move. The Tenant states that when she contacted the Strata the Tenant was told that the Strata would only speak with the Landlord about the matter. The Tenant states that no copies of the Strata bylaw were provided to her at any time by the Landlord and it is noted that the tenancy agreement does not reference any strata bylaws or rules.

The Landlord states that a new tenant moved into the unit on September 1, 2012 but that since the Tenant moved out before the end of the fixed term that the Tenant owes the Landlord and the Landlord claims \$750.00

The Landlord states that the unit was painted at the onset of the tenancy with a color chosen by the Tenant and claims \$500.00 to repaint the unit a different color. The Landlord states that this painting has not occurred. The Tenant states that the Landlord told the Tenant that the unit would be painted at move in and the Tenant was offered the opportunity to choose a color by the Landlord.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss

claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the evidence of the Landlord in the form of a Strata letter that indicates that the Landlord had options to dispute or possibly mitigate the Strata charges, and considering that the Landlord did not provide sufficient evidence of effort on the Landlord's part to mitigate the amount claimed by making submissions on the matter to the Strata, I find that the Landlord failed to take any reasonable steps to mitigate this claim and I therefore dismiss this claim.

Given the evidence of the Landlord that a new tenancy was started on September 1, 2012, I find that the Landlord has not proven any loss of rental income and I dismiss this claim.

Given the evidence of the Tenant that the Landlord offered the Tenant a choice of paint color and considering the Landlord's evidence that the unit has not been repainted, despite a new tenant in place, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant caused any loss and I dismiss this claim.

Based on the agreed facts, I find that the Landlord has substantiated a monetary entitlement to **\$1,600.00** for unpaid August 2012 rent, **\$536.00** for damage to the unit, and **\$50.00** for NSF charges. As the Landlord has only been partially successful with its claim, I decline to award recovery of the filing fee. The total entitlement of the Landlord is **\$2,186.00**. Setting the security deposit of **\$800.00** plus zero interest off the entitlement leaves **\$1,386.00** owing by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$800.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act

for the balance due of **\$1,386.00**. If necessary, 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: December 04, 2012.

Arbitrator
Residential Tenancy Branch