



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

The Tenant applied on October 5, 2012 for:

1. An Order for the return of the security deposit – Section 38; and
2. An Order for the return of the tenant’s personal property – Section 65.

The Landlord applied on October 22, 2012 for:

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

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

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Tenant entitled to return of personal property?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on February 1, 2011. Rent of \$820.00 was payable monthly and at the outset of the tenancy the Landlord collected \$410.00 as a security deposit. A move-in inspection report was mutually conducted on January 29, 2011.

The Landlord states that on October 1, 2012, it was noticed that the Tenant's unit was empty with the exception of some pieces of furniture and that on October 2, 2012 the Landlord contacted the Tenant to come and pick up his furniture, pay the rent and to pay for a fridge that was not in the unit. The Landlord states that the Tenant and his wife arrived on October 2, 2012 to do a move out inspection but that the Tenant was angry and did not do the inspection. The Landlord states that he called the Tenant a second time but that the Tenant would not talk to him and told the Landlord that he would call the Landlord back but never did. The Landlord states that the Tenant is free to come and pick up his left behind furniture any time. The Landlord states that the Tenant informed him that the fridge in the unit had been placed in the next door unit. The Landlord states that the unit next door does have a fridge and was rented with a fridge but that the Tenant's fridge is gone. The Landlord states that the fridge was 6 months old at the onset of the tenancy.

The Landlord states that the Tenant's unit was advertised on October 15, 2012 by placing an advertisement on the front of the building. The Landlord states that no other advertising was done as advertising on the building usually easily rents available units. The Landlord states that the unit has not yet rented as the unit had to be repaired and painted and that there was no time available in October. The Landlord claims unpaid rent for October 2012, \$507.36 for the cost to replace the fridge, \$134.40 for cleaning the unit and \$100.00 for the removal and storage of the Tenant's belongings.

The Tenant states that the Landlord failed to make necessary repairs throughout the tenancy leaving the unit in an unliveable condition. The Tenant states that the fridge did not work so in early September 2012 the Tenant purchased his own fridge and placed

the old fridge from the unit in unit 103 as the tenants in that unit were moving out and were taking their fridge with them leaving room for the Tenant's fridge.

The Tenant states that the Landlord had promised the Tenants a different unit but that this was not provided when the promised unit became vacant on July 30, 2012. The Tenant states that when he paid for September 2012 rent he asked the Landlord for a different unit. The Tenant states that since one was not available and since the unit had bad wiring and leaks, they were afraid of fire and moved out of the unit on a temporary basis. The Tenant states that he signed a lease for a place at a different location and moved into that unit on September 15, 2012 but that the move was only temporary. The Tenant states that he never ended the tenancy, had paid September 2012 rent and was simply waiting to move into another unit. The Tenant states that the unit was not cleaned after September 15, 2012 and that when he returned to the unit on September 28, 2012, the unit's locks had been changed by the Landlord. The Tenant states that he planned to clean the unit but that when he called the Landlord there was no answer and the Tenant did not leave a message. The Tenant claims return of the security deposit and return of the Tenant's belongings. The Landlord states that repairs were made to a bathroom leak and to holes.

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 costs for the damage or loss have been incurred or established and that the claiming party has taken reasonable steps to mitigate its loss.

There is no dispute that the Tenant did not give notice to end the tenancy and moved into another resident prior to October 2012. However, based on the evidence of the Landlord that the unit required repairs and noting that such repairs have not been claimed as necessary due to any act of the Tenant, I find, on a balance of probabilities, that the state of the unit contributed to a greater degree to the lack of the unit being

rented than the actions of the Tenant. Further, I find that the minimal advertising efforts to be unreasonable. Based on these facts, I find that the Landlord has not established that the Tenant caused the losses claimed or that the Landlord acted reasonably to mitigate its losses. I therefore dismiss the Landlord's claim for October 2012 rent.

I do accept however that the Tenant was given an opportunity to clean the unit and remove its final belongings but that the Tenant neglected to do so. As a result, I find that the Landlord has substantiated its claim for costs in relation to cleaning the unit in the amount of **\$134.40** and the costs for moving the Tenant's belongings into storage in the amount of **\$100.00**.

Given the Tenant's evidence that the fridge was removed from the unit without notice to or permission from the Landlord, I find that the Tenant is responsible for the loss of the fridge. As a result, I find that the Landlord is therefore entitled to its replacement cost of **\$507.36**. As the Landlord has been partially successful with its application, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$791.76**. Setting the security deposit of **\$410.00** plus zero interest off this amount leaves **\$381.76** owing by the Tenants to the Landlord.

As the Landlord has agreed that the Tenant can collect his belongings at any time, I find that there is no need to make an Order in relation to this collection. Should the Tenant not be able to retrieve his belongings due to any act or negligence of the Landlord, I give the Tenant leave to reapply for losses that may arise.

As the security deposit has been dealt with above, I dismiss the Tenant's claim for return of the security deposit.

Conclusion

I Order that the Landlord retain the deposit and interest of \$410.00 in partial satisfaction of the claim and I grant the Landlord and Order under Section 67 of the Act for the

balance due of **\$381.76**. 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 Act.

Dated: November 22, 2012.

Residential Tenancy Branch