



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to a monetary order for the costs of cleaning the suite and unpaid rent and loss of income?

Background and Evidence

The tenancy began on or about September 1, 2011. Rent in the amount of \$1450.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$725.00.

The landlord gave the following testimony; on September 3, 2012 the landlord received written notice from the tenants that they wish to end their tenancy and vacate the unit on September 30, 2012, the landlord issued a letter to the tenant's that based on the late notice; that if they were unable to rent the unit for October 1st the tenants would be responsible for any loss of rent for that month, the landlord was able to rent the unit for October 15, 2012, the landlord informed the tenants that they were responsible for the rent for October 1-14 in the amount of \$696.00; which the tenants agreed to, no rent was paid on October 1, 2012, on October 2, 2012 the landlord posted a notice on the tenants door to enter the suite and to conduct an inspection, the landlord left several

voice mail messages with the tenants in an attempt to conduct the move out inspection, the landlord posted a second notice on the tenants door with a final attempt to schedule a move out inspection, the resident manager entered the unit on October 3, 2012 and found the unit; dirty, messy, empty and the some of the keys left on the counter, further attempts were made to contact the tenants over the next three days without any success, the landlord commenced to have the unit painted, cleaned and prepared for the new incoming tenants on October 15, 2012, the landlord was fully prepared to allow the tenant to clean and mitigate the mess and the costs but was unable to contact her to do so, seeking the costs of painting, cleaning, repairs, and prorated rent for October 1-14, 2012.

The tenant gave the following testimony; initially agreed to pay a prorated amount of rent for October 1-14, 2012, attended the suite on October 6, 2012 to find the resident manager had begun cleaning the unit and undertaking repairs, feels that she should only have to pay a prorated amount for October 1-6, 2012 as the landlord took over the unit earlier than agreed to, assumed the security deposit would automatically be withheld by the landlord for the prorated amount and that's the reason rent wasn't paid on the first, agrees that the unit was dirty and messy but fully intended to have her own cleaners clean the unit, does not agree that she should be responsible for any of the costs incurred by the landlord.

Analysis

The landlord is the sole applicant in this matter and I will address each of their claims and my findings as follows;

First Claim- The landlord is seeking \$696.00 for a prorated amount of rent for October 1-14, 2012 inclusive as well as the \$25.00 late fee as agreed upon by both parties in their tenancy agreement. The landlord seeks this amount as the tenant did not provide proper notice to the landlord. The tenant does not dispute the late notice but feels the landlord pre-emptively took over the unit and she should not be responsible for any loss of revenue beyond October 6-14, 2012. The landlord provided extensive

documentation, photos and witness testimony for this hearing. Both the agent for the landlord and the resident manager stated numerous times that multiple attempts were made to contact the tenant to no avail. When they entered the unit on October 3, 2012, they felt as if the unit had been abandoned. They both gave testimony that the keys were on the counter, the unit was messy and that all of the tenant's personal items were removed. The tenant stated several times that she assumed the security deposit would cover the rent owing and that it was verbally agreed to. The landlord disputes that any agreement was in place. The tenant was not able to provide any supporting documentation of that said agreement.

The landlord is entitled to conduct their business without obstacles or restrictions and with a duty to minimize and mitigate losses. I find that the landlord has done that in the matter before me. The landlords were acting responsibly and reasonably under the circumstances. They had to prepare the unit for the incoming tenants. With the unpaid rent, total loss of communication with the tenants, the unit dirty, damaged and empty, the landlord was left with no alternative but to commence cleaning and repairing the unit. I find that the landlord is entitled to the \$696.00 plus \$25.00 late fee for a total of \$721.00.

Second Claim – The landlord is seeking \$550.00 for the painting of the unit. The landlord provided documentation that the unit was painted just prior to the subject tenants taking possession. The landlord provided photos, the condition inspection report and the receipt to support this portion of their claim. The tenant does not agree with this claim as she feels that if she would have had an opportunity to wash the walls the cost could have been reduced. I accept the evidence presented by the landlord and I find that they are entitled to \$550.00.

Third Claim – The landlord is seeking \$45.00 to repair a hole in the wall. The tenant adamantly disputes this claim as she was unaware of any holes in the unit. The landlord provided a “Standard Charges” worksheet to support their claim of \$45.00 per hour to make repairs. The landlord provided a photo and the condition inspection report to

support their claim. I do accept that the tenant damaged the wall however I do not find \$45.00 a reasonable amount to repair the hole. The landlord has provided a "Standard Charges" worksheet for this hearing. This is a generic form generated by the management of the property but does not address the specifics of the damage before me. I find that the appropriate amount is \$25.00. I find the landlord is entitled to \$25.00.

Fourth Claim - The landlord is seeking $\$45.00 \times 4 \text{ hours} = \180.00 for the costs of cleaning the unit. As stated earlier, the tenant is of the position that if given an opportunity to clean the unit she would have been able to reduce the costs. Based on the evidence before me and my finding in the first claim of this decision; I do find that the landlord is entitled to the recovery of cleaning costs. However, I do not find the hourly rate to be a reasonable one. The landlords have "in house" staff that conducted the work. The landlord was again relying on a "Standard Charges" worksheet for this hearing. That form does not address the specifics of the matter before me. I find that a more appropriate hourly rate is \$25.00 per hour for the work conducted. The landlord is entitled to $\$25.00 \times 4 \text{ hours} = \100.00 .

Fifth Claim - The landlord is seeking \$75.00 for the replacement costs of keys to the unit. At the outset of the hearing the landlord advised that all keys had been recovered and no longer wished to pursue this portion of their claim, accordingly, I dismiss this portion of the landlords application.

As for the monetary order, I find that the landlord has established a claim for \$1396.00. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$725.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$721.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$721.00. The landlord may retain the security deposit.

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: January 15, 2013

Residential Tenancy Branch

