



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for 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.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed to the following; The tenancy began on August 1, 2011 and ended on November 2, 2012. The tenants were obligated to pay \$1355.90 per month in rent in advance and at the outset of the tenancy the tenants paid a \$675.00 security deposit.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I address the landlord's claims and my findings around each as follows.

First Claim – The landlord is seeking \$89.56 rent for over holding the unit until November 2, 2012. The tenants did not vacate the unit by October 31, 2012 as agreed. An agreement was reached to allow the tenants to remain for two extra days at a prorated cost. The tenants did not dispute this portion of the landlords claim. The landlord is entitled to \$89.56.

Second Claim – The landlord is seeking \$158.74 for unpaid utilities as agreed upon in their tenancy agreement. The tenants do not dispute this portion of the landlords claim. The landlord is entitled to \$158.74.

Third Claim – The landlord is seeking \$1411.20 for repairs to the unit. The repairs as claimed by the landlord are as follows; filing and patching nail holes, repainting many walls in the unit, replacing baseboards, replacing a window screen, new interior door, new patio screen, repair the patio door lock. The tenant disputes the majority of this claim. The tenant stated that a very informal walk thru was conducted at the beginning of the tenancy. At move out the landlord conducted a more thorough and written inspection. The tenant stated that the parties came to an agreement to deductions for repairs. The tenant agreed to \$220.00 for patching of nail holes, \$120.00 for the replacement of the baseboard in the master bedroom and \$40.00 for the replacement of the window screen. The tenant was very forthright and stated on two separate occasions "I take full responsibility for those items and the landlord is entitled to those costs". The landlord testified that they had originally agreed to the amounts but stated it was dark in the suite at time of the walk thru. The landlords stated that when they attended during daylight hours they found more damage. The landlord stated that both parties agreed to have several quotes submitted to estimate the costs of repairs. The landlord stated the tenant never responded back to the landlord in regards to which

company she was agreeable to. The landlord needed to repair the unit in preparation of re-renting it.

A portion of the hearing was taken to explain the importance of the Condition Inspection Report. It was explained to both parties that it is a vital tool that assists in ensuring a good sound tenancy.

The landlord acknowledged that a move in condition inspection report was not conducted but provided photos that she stated were taken just a few days before the tenant moved in and then more photos after the tenant moved out. The tenant and her witness both gave testimony that the photos were a very poor depiction of the actual condition of the unit. In several photos the tenants advised that although the room appeared orange it was actually a “creamy” colour. The landlord acknowledged that the room in fact was not orange but “ivory”. The landlord advised that she “did not use the flash in these photos as the damage would not show up then”. The tenants witness stated that these picture “in no way, shape or form represent the true condition of this unit”. The witness further gave evidence that the unit was in a nice clean condition when the tenant’s moved in “but by no means new”. The landlord stated the unit had been renovated 6 years ago and painted three years ago.

Many of the photos provided by the landlord are of a poor quality and do not clearly depict the unit; that in addition to the lack of move in condition inspection report, I am unable to ascertain a clear and distinct timeline of the unit and the changes as claimed by the landlord. Based on the insufficient evidence provided by the landlord and the consistent acknowledgment of responsibility of the tenant I find that the landlord is entitled to the amount as originally agreed to by the landlord and tenant of \$380.00.

Fourth Claim - The landlord is seeking \$53.61 for carpet cleaning. The tenant and her witness were adamant that they did in fact clean the carpets and was the reason for over holding the unit. The tenants stated that the landlords were present when the cleaning was being conducted and it was never mentioned during the move out

inspection that it was an issue. The landlords did not dispute this portion of the tenant's testimony. As in the previous claim without clear documentation of the unit at move in and move out I am unable to ascertain the change of condition and for that reason I dismiss this portion the landlords claim.

In summary, the landlord has been successful in the following claims:

Rent for Two Days	\$89.56
Utilities	\$ 158.74
Filing and Patching nail holes	\$220.00
Filing Fee	\$50.00
Replacement of Baseboard	\$ 120.00
Replacement of Window Screen	\$ 40.00
Total:	\$678.30

The landlord has established a claim for \$678.30. I order that the landlord retain the deposit of \$675.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3.30. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$3.30. 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: February 05, 2013

Residential Tenancy Branch

