



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, MND, 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. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for damages to the unit – Section 67;
4. A Monetary Order for compensation – Section 67;
5. An Order to retain the security deposit - Section 38; and
6. 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.

Preliminary Matter

This dispute was first set for a hearing to be conducted on March 21, 2013. At the onset of this hearing, the Landlord withdrew the claim for an Order of Possession as the Tenant had moved out of the unit. It was noted that the Tenant's evidence package was not in front of the Arbitrator. The Tenant stated that the Landlord's application and evidence package was received on March 12, 2013 and that the Tenant sent out its evidence package yesterday. The Tenant requested an adjournment for the evidence package to be in front of the Arbitrator. The Landlord stated that the Landlord does not want to review the materials provided by the Tenant and is prepared to continue without the evidence. Noting that the Landlord's application was made on February 26, 2013

and was not served on the Tenant within 3 days of that filing date and considering that to proceed without the Tenant's evidence package during the Hearing would prejudice the Tenant, I adjourned the hearing to today's date.

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 tenancy started on April 1, 2012 and ended on February 28, 2013. The Tenant provided more than a month's notice to end the tenancy. Rent of \$1,350.00 was payable monthly and at the outset of the tenancy the Landlord collected \$675.00 as a security deposit and \$675.00 as a pet deposit. The Parties agree that the Tenant did not pay rent for February 2013. The Landlord claims \$1,350.00 in unpaid rent.

The Parties mutually conducted a move in and move out condition inspection. The Landlord agrees that at the completion of the move-out inspection of February 29, 2013, the Landlord told the Tenant that everything was fine and that the unit smelled and looked clean. The Landlord states that no inspection of the back yard took place as the Landlord assumed that the Tenant would leave it in good repair. The Landlord agrees that the Tenant signed the condition report noting no damages and a clean unit. The Landlord states that the inspection was quick and that after the Tenant left the Landlord did a more thorough inspection, made changes to the inspection report and took photos of the damages found. The Landlord states that the Tenant left the unit unclean and smelling of dog urine and the back yard damaged.

The Tenant states that the inspection was thorough and included closets. The Tenant states that the unit was all cleaned, vacuumed and washed, including the floors but that the window sills were not 100% clean. The Tenant states that the appliances were cleaned except for underneath as they had no rollers. The Tenant did not ask the Landlord to move the appliances to enable the cleaning. Witness A states that she

assisted with cleaning the unit and was present during the inspection. Witness A states that at the completion of the inspection the Landlord told them the unit was immaculate. The Landlord disagrees with this word. Witness B states that she also assisted with the cleaning of the unit that included the baseboards and closets.

The Tenant agrees that her dogs contributed to damage in the back yard but that the yard was uneven at move-in to the point where the Tenant stumbled while walking. The Tenant states that the Landlord also has two dogs, at least one of which also dug up the back yard. The Tenant states that she carried out repairs to the yard during the tenancy such as planting flowers or rocks in holes and reseeding the middle area of the yard. The Tenant states that had the Landlord informed the Tenant that the back yard had been a problem the Tenant would have made repairs but since the Landlord did not the Tenant believed that all was good.

The Landlord states that due to these damages, the unit could not be rented for March 1, 2013. The Landlord submits that the unit was ready for occupancy on March 15, 2013 but that she was still unable to rent the unit. The Landlord states that her son initially was to move in on March 20, 2012 but will now not move into the unit until it has been painted. The Landlord states that the unit has yet to be painted as the Landlord cannot afford the cost. The Landlord claims \$1,350.00 for lost rental income for March 2013.

The Landlord states that the Tenant owes \$87.42 for hydro from November 22, 2012 to January 22, 2013. The Tenant states that this was paid. There is no dispute that the gas utilities have been paid by the Tenant.

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. Considering the move-out report and the undisputed evidence that the Landlord accepted that the unit was clean at move-out, I find that by conducting a further and more thorough inspection alone and later, the Landlord failed to provide the Tenant with opportunity to remedy any deficiencies that arose as a result of the second inspection. The carrying out of a second inspection also implies that the Landlord did not reasonably carry out the first inspection. As a result, I find that the Landlord failed to reasonably mitigate the costs claimed by not taking reasonable steps to ensure a complete inspection with the Tenant. I therefore dismiss the Landlord's claim for damages to the unit and yard.

As the Tenant has not been found responsible for damages to the unit and yard, I dismiss the Landlord's claim for lost rental income and advertising costs. As nothing in the Act provides compensation for dispute costs other than the filing fee, I dismiss the Landlord's claim for dispute costs over the filing fee.

Although the Tenant states that the utility was paid, as the Tenant provided no proof of this payment, I find that the Landlord has substantiated on a balance of probabilities an entitlement to **\$87.42** for unpaid hydro. Based on undisputed evidence of unpaid rent I find that the Landlord has substantiated an entitlement to **\$1,350.00** for a total entitlement of **\$1,437.42**.

Accepting that the Tenant had previously agreed that the Landlord could retain the security and pet deposit for the rental arrears, I decline to award recovery of the filing fee. Deducting the entitlement from the combined security and pet deposit of **\$1,350.00** plus zero interest, leaves **\$87.42** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain \$1,350.00 from the security deposit plus interest in the amount of \$1,350.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$87.42**. 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: May 21, 2013

Residential Tenancy Branch

