



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were 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 tenancy started on September 1, 2011 and on a fixed term to August 31, 2012. A second tenancy agreement was entered into on June 14, 2012 for a term starting September 1, 2012 and ending on August 31, 2013. The tenancy ended on March 28, 2013. Rent of \$1,800.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit and \$400.00 as a pet deposit. The Parties agree that the Tenants caused the unit to be damaged

by an interior water sprinkler. The Tenant states that insurance covered the costs of the damage.

The Landlord states that time was spent by the Landlord coordinating repairs to the unit and claims \$210.00. The Landlord provided no invoice for this cost and states that the amount is comprised from seven hours of the Landlord's time. The Tenant states that the Tenants coordinated all the repairs, that the Landlord did not coordinate any or the repairs, and that anything done by the Landlord was part of the Landlord's usual obligations as a Landlord.

The Landlord states that although the tenancy agreement does not provide for a new renter placement fee, the Landlord is required to pay a fee of \$900.00 for finding a new tenant and as the Tenants ended the tenancy early, the Tenants are responsible for this cost. Further, the Landlord states that the Tenants orally agreed to pay this cost and confirmed this in an email and that this therefore amended the tenancy agreement in relation to liquidated damages. This email is attached and it is noted that in the email the Landlord sets this cost out as a penalty and that the Tenant's response is that this cost "sounds fair". The Tenant states that although they initially agreed, after checking the tenancy agreement and noting the tenancy liquidation clause, the Tenant retracted their oral agreement. It is noted that the tenancy agreement provides that early termination will result "in claims for liquidated damages arising from the leasing of the premises, including but not limited to advertising costs and credit checks, in the amount of \$400.00." The Tenant states that they only agree to the \$400.00.

The Landlord states that after the repairs were completed, the owner wanted to ensure that the repairs were done properly and so hired an independent inspector to carry one out. The Landlord claims \$75.00 for this cost. The Tenants state that as the repairs were not done by the Tenants, any claims for damages arising from the repairs are not the responsibility of the Tenants.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. 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 Tenants' evidence that they coordinated all the repairs and considering that the Landlord did not provide an invoice detailing the times and dates of coordinating repairs, I find that the Landlord has failed to establish the costs claimed for such coordination and I dismiss this claim.

A written agreement cannot be changed orally. Given the Landlord's evidence that the tenancy agreement in relation to the liquidation clause was amended orally and considering that the email does not reasonably constitute a written amendment to the tenancy agreement, I find that the tenancy agreement was not amended to include or replace the liquidated damaged clause. Given the Tenant's agreement however to pay the \$400.00 as set out in the tenancy agreement, I find that the Landlord has substantiated a reduced claim in the amount of \$400.00.

Given that the inspection fee was in relation to repairs that were not done by the Tenant, I find that the Landlord has failed to substantiate that the Tenant's caused this cost. I therefore dismiss this claim. As the Landlord's application has met with minimal success, I decline to award recovery of the filing fee.

I order the Landlord to deduct **\$400.00** from the security deposit of **\$800.00** plus zero interest and to return the remaining **\$400.00** of the security deposit and the **\$400.00** pet deposit forthwith.

Conclusion

I order that the Landlord retain \$400.00 from the **deposits** and interest of \$1,200.00 in full satisfaction of the claim.

I grant the Tenants a monetary order under Section 67 of the Act for the balance due of **\$800.00**. 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: July 03, 2013

Residential Tenancy Branch