



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, 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 compensation for loss – Section 67;
2. A Monetary Order for unpaid rent – 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 Tenant were each 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 May 15, 2012 for a fixed term expiring on May 14, 2013. On February 5, 2013 the Tenant gave notice to end the tenancy for March 15, 2013 and moved out of the unit on February 24 or 25, 2013. Rent of \$1,250.00 was payable monthly on the first day of each month and at the onset of the tenancy the Landlord collected \$625.00 as a security deposit and \$300.00 as a pet deposit.

The Landlord states that the Tenant ended the tenancy before the fixed term date and that although the Landlord advertised the unit, a new tenancy was not obtained until April 19, 2013. The Landlord claims lost rental income for March 2013.

The Landlord states that the unit was advertised for free on a Japanese web site from February 19, 2013 onwards and on craigslist from March 15, 2013 onwards. The Landlord states that she targeted Japanese renters as she was wary of renting the unit to Canadians. The Landlord states that she advertised the unit for \$1,375.00 as this amount included utilities unlike the tenancy agreement with the Tenant that required separate payment for utilities to the Landlord. The Landlord states that the Tenant's utilities were running between \$100.00 and \$150.00 per month. The Tenant states that the utilities were running between \$100.00 and \$120.00 per month. It is noted that the Landlord provided a copy of the ad that ran on the Japanese website and that this ad is only in Japanese. The Landlord states that the website provides the ad in both Japanese and English.

The Landlord states that due to financial restraints and her budget the Tenant's notice to end the tenancy was not planned for and that the Landlord had to borrow funds to pay for the rental advertisement in a newspaper on April 12, 2013. The Landlord claims this cost of \$71.90.

The Tenant does not dispute owing \$625.00 for March 2013 but disputes responsibility for the entire month as the Landlord rented the unit for a higher amount and was looking for a particular tenant. Further the Tenant states that the Landlord was selling the house, that the sale sign was on the property when the Tenant moved out and that it was more likely that she was unable to find renters for this reason. The Landlord states that the house was only listed for sale between October and December 2012 and that there was no sale sign outside the house until it was again listed on March 25, 2013.

The Parties mutually conducted a move-in inspection and report however the Landlord did not file this as evidence. The Tenant states that no copy of this report was ever

provided to the Tenant. The Landlord states that no dates were provided to the Tenant for a move-out inspection as the Tenant did not answer her phone and the Landlord did not know exactly when the Tenant was moving out. The Landlord states that an inspection of the unit was done by the Landlord alone on February 26, 2013 but that no report was filled out and no copy sent to the Tenant. The Tenant states that no calls were ever received from the Landlord, no voice messages were left and the Tenant's phone number has not changed for years.

The Landlord states that the Tenant only did a basic clean of the unit and that the Landlord has to hire cleaners to clean such items as the fridge, oven floors, counters and windows. The Landlord claims \$39.00 for this cost. The Landlord also claims \$79.00 for the cost of carpet cleaning. The Tenant states that the unit was cleaned at move-out including the fridge and stove but that the carpets were only vacuumed.

The Tenant does not dispute the costs claimed for the gas bills in the amounts of \$36.94 and \$40.80. The Landlord also claims unpaid hydro in the amount of \$163.80 and provided a copy of that bill. The Tenant states that this bill was paid for at the end of February 2013 by cheque. The Landlord states that this could not have happened as the bill did not come in until after the end of February 2013.

The Landlord states that the tenancy agreement provides that the Tenant not dispose of pet waste in the two waste cans and that the Tenant placed her kitty litter in both the waste cans causing them to smell. The Landlord states that as a result the Landlord had to purchase two waste cans and claims the cost of \$24.60. The Tenant states that only one waste can was provided to the Tenant and that this waste can was the only can used by the Tenant. The Tenant does not dispute the cost of one waste can in the amount of \$10.98.

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.

Based on the agreement of the Tenant, I find that the Landlord has substantiated unpaid rent to March 15, 2013 in the amount of **\$625.00**. Although the Tenant ended the tenancy before fixed term end date, given that the Tenant provided more than a month's notice and considering that the Landlord significantly narrowed her market with her first advertisement for approximately one month, I find that the Landlord failed to take reasonable steps to mitigate the loss claimed and I dismiss the Landlord's claim for the remaining rent for March 2013.

Given the lack of a move-in and move-out report or photos of the unit at move-out, and considering the Tenant's evidence that the unit was cleaned at move-out I find that the Landlord has failed to substantiate that the Tenant failed to leave the unit reasonably clean other than the carpets and I dismiss the cost claimed for cleaning the unit. Based on the undisputed evidence of the Parties that the carpet was not cleaned at the end of the tenancy and considering that the tenancy lasted for over 9 months, I find that the Tenant was required to leave the carpet reasonably clean and failed to do so by only vacuuming the carpet. As a result, and given the receipt for the cost, I find that the Landlord has substantiated its claim for **\$79.00**.

Given the agreement of the Tenant, I find that the Landlord has substantiated the costs claimed for gas in the total amount of **\$77.74** (\$36.94 + 40.80). Although the Tenant states that the hydro bill was paid by cheque, given the lack of evidence of the cheque and considering the Landlord's evidence of the timing of the bill, I find that the landlord has substantiated the cost claimed of **\$163.80**.

Considering that the Landlord did not provide any evidence that cleaning of the garbage cans was tried prior to buying new ones, but considering that the Tenant does not

dispute one cost, I find that the Landlord has only substantiated the undisputed cost of **\$10.98** for one garbage can.

As the Act does not provide for compensation of costs of the dispute process beyond recovery of the filing fee, I dismiss the claims of the Landlord for registered mail costs. Given that the Landlord has been substantially successful with its claim, I find that the Landlord is entitled to recovery of the filing fee of **\$50.00** for a total entitlement of **\$1,006.52**. Setting the combined security and pet deposit of **\$925.00** plus zero interest off the entitlement leaves **\$81.52** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security and pet deposit of \$925.00 in partial satisfaction of the claim and grant Landlord an order under Section 67 of the Act for the remaining amount of **\$81.52**. 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 09, 2013

Residential Tenancy Branch

