



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing.

At the hearing, the landlord withdrew her claims for the cost of a garburator and the cost of cleaning.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2012 and was set to run for a fixed term ending on June 30, 2013. They further agreed that the tenants paid a \$900.00 security deposit at the outset of the tenancy and that rent was set at \$1,800.00 per month. They further agreed that they did not conduct a move-in or a move-out inspection or prepare any written report on the condition of the rental unit.

The landlord seeks to recover one half of one month's rent as the tenants vacated the rental unit one month early on May 31, 2013 and she was unable to re-rent the unit until June 15, 2013. The landlord testified that in late March 2013, the female tenant, L.B., phoned the landlord and asked to be removed from the tenancy agreement. The landlord declined to remove her as a party to the agreement and in April, the male tenant, T.S., gave the landlord written notice that they would be terminating the tenancy on May 31, 2013. The landlord testified that as soon as she received written notice, she began advertising the unit on Craigslist for the same rental rate that the tenants were paying and that she later reduced the rate in order to attract tenants. The tenants testified that they needed to end the tenancy early because their relationship was

ending and alleged that the landlord should have hired a property manager as soon as they gave their notice.

The landlord seeks an award of \$300.00 representing 5 days of rent, stating that the tenants returned to the rental unit 5 days after having moved out in order to retrieve a bicycle from the garage. The landlord argued that the tenants were using the garage as storage and were obligated to pay for that use.

The landlord seeks to recover \$525.00 as the cost of repainting 2 bedrooms in the rental unit. She testified that she gave the tenants permission to paint over the existing paint, which was purple with stripes, but at the end of the tenancy she discovered that the tenants had touched the wall colour onto the ceiling in several places and had painted over the face of the thermostat dial and that they had failed to adequately sand the walls, which resulted in a raised area along the edge of each of the stripes which were painted over. The landlord testified that the rooms had last been painted approximately 2 years before the start of the tenancy. The tenants stated that they received black and white copies of the landlord's photographs, but could not make out any detail in the photos. They said that after they had completed the painting, the landlord had viewed the room and said that it looked great. The landlord denied having stated that the room looked great.

The landlord seeks to recover \$150.00 paid to clean the carpet in the rental unit. Although the tenants rented a cleaning machine and cleaned the carpet themselves, the landlord maintained that it required additional cleaning.

The landlord seeks \$110.00 as the cost of repairing the garage door. The landlord testified that when she attempted to open the garage door at the end of the tenancy, she was unable to do so due to a dent. The tenants claimed that the garage door had never worked well during the tenancy and that each time they used the automatic garage door opener, they had to click the button several times in order for the door to open fully.

The landlord seeks to recover the filing fee paid to bring her application.

Analysis

The tenants are bound by their written agreement despite their unfortunate life circumstances and did not have the legal right to end the tenancy prior to the end of the fixed term. The landlord is required under the Act to act reasonably to mitigate her losses and I find that placing advertisements on Craigslist was sufficient to meet her

obligations in this regard. I find that the tenants are responsible for the half month of rent lost by the landlord and I award the landlord \$900.00.

As the landlord has been awarded lost income for the first half of June, I dismiss the landlord's claim for 5 days of occupational rent related to the tenants returning to retrieve their items as such an award would amount to double recovery for the same time period.

The landlord gave the tenants permission to repaint the two bedrooms at issue and while it is clear that the tenants were someone careless in their painting by touching the roller to the ceiling in several places and not sanding the wall prior to applying new paint, I find the problem to be relatively insignificant. Residential Tenancy Policy Guideline #40 lists the useful life of building elements and it identifies the useful life of interior paint as 4 years. As the tenancy ended 3 years after the unit had last been painted, I find that the paint had just one year of useful life remaining and I find that while the value of the paint may have been diminished somewhat by careless painting, the problem is solely cosmetic and is not significant enough to warrant compensation. I therefore dismiss the claim for the cost of painting.

The landlord had a statutory obligation to inspect the rental unit together with the tenants both at the beginning and at the end of the tenancy and to create a written report. The landlord chose not to do so despite repeated requests by the tenants and therefore has no written record showing the condition of the carpet or garage door at the beginning of the tenancy, so it is impossible to determine whether the current condition of the carpet and garage door are the result of reasonable wear and tear or are unreasonably soiled and damaged. Because I do not have sufficient evidence to show that the damage alleged is beyond what may be characterized as reasonable wear and tear, I dismiss the claims for the cost of carpet cleaning and garage door repair.

The landlord has been only partially successful in her claim. I therefore find that she should recover one half of the \$50.00 filing fee paid to bring her application and I award her \$25.00.

Conclusion

The landlord has been awarded a total of \$925.00. I order the landlord to retain the \$900.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$25.00. This order may be filed in the Small Claims Division of the Provincial 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: September 17, 2013

Residential Tenancy Branch

