



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, her witness and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for losses suffered as a result of a short notice to end the tenancy; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on February 26, 2013 for a 1 year fixed term tenancy beginning on March 1, 2013 for a monthly rent of \$1,475.00 due on the 1st of each month with a security deposit of \$737.50 paid.

The tenancy agreement includes a clause (clause 7) identifying that should the tenant end the tenancy prior to the end of the fixed term she would be responsible to pay the landlord \$400.00 in liquidated damages. The term defines liquidated damages as a pre-estimate of the landlord's costs of re-renting the rental unit.

The agreement also stipulates in clause 19 that the tenant may not assign the tenancy agreement or sublet the rental unit.

The tenant submits that she had identified to the landlord a few months into the tenancy that her father was very ill and that she would be moving to his home and that she would try to find a suitable tenant to continue the fixed term tenancy. The landlord acknowledges the tenant had put a potential tenant forward who they considered but did reject over concerns of her income.

The landlord also acknowledges that the tenant had indicated that her sister and/or cousin would be interested in taking over the unit but that when the landlord suggested to the tenant that she continue to pay the rent and she could collect it from her sister and/or cousin the tenant rejected the offer.

The landlord has provided into evidence a form letter from the landlord's property management company signed by the tenant on July 29, 2013 that states she is vacating the rental unit and that she acknowledges she will be responsible for the payment of rent until the end of the fixed term unless it is rented to someone else. The letter also indicates that acceptance by the landlord does not waive the liquidated damages clause in the tenancy agreement. The tenant vacated the unit on July 31, 2013.

The landlord submits the rental unit was re-rented for September 1, 2013 and seeks rent for the month of August 2013 only, in the amount of \$1475.00. The landlord also seeks compensation in the amount of \$826.00 for the costs of hiring her property management company to find a new tenant.

The landlord submits that the tenant had failed to clean some grease stains on the sundeck from what appeared to be stains from barbecuing. The tenant acknowledged having a barbecue but submits that the stains were caused by grease dripping from the neighbouring deck above her. The landlord seeks \$28.32 for the purchase of a product to clean the grease from the deck.

The landlord also seeks compensation for the replacement of bulbs in the kitchen area in the amount of \$12.31. The tenant submits that when she originally moved in the lights in the kitchen weren't working properly and that she had purchased bulbs but the landlord had to have someone come and repair the lighting. The landlord submits the wattage of the original bulbs was too high for the fixture and caused the breaker to trip, but that the bulbs had been replaced and had been working.

The landlord also seeks compensation for the replacement of locks on the rental unit in the amount of \$173.56. The landlord submits that on August 1, 2013, after the tenancy had ended the day before, the tenant called the landlord from the rental unit and threatened to take the microwave and washer and dryer if the landlord did not attend immediately and return the tenant's security deposit.

The landlord immediately called a locksmith and met him at the rental unit to change the locks. The landlord submits the tenant and microwave were not there but the washer and dryer were there.

The tenant submits that she was angry with the landlord for refusing to return the deposit immediately and she didn't really mean the threat. She stated the movers had already removed the microwave thinking it was the tenants. The microwave was returned at a later date.

The landlord also seeks compensation for cleaning the rental unit in the amount of \$60.00. Both parties testified that they had photographs of the condition of the rental unit at the end of the tenancy but neither party submitted them as evidence for the hearing.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

While I accept, from the testimony of both parties, that the landlord was willing to allow the tenant to vacate the rental property and either accept a new tenant or allow the tenant to have her family members move into the unit and have the continue paying rent I find the tenant did not wait until either option was secured before ending the tenancy.

As per Section 45(1) of the *Act* and in the absence of any evidence or testimony that the landlord had failed to comply with a material term of the tenancy agreement or the finding of a tenant accepted by the landlord I find the earliest the tenant could end the tenancy was at the end of the fixed term and as such the tenant is responsible for the payment of rent until February 2014, subject only to the landlord's obligation to mitigate for losses.

As the tenant only gave the landlord 2 days written notice of her intent to vacate the rental property I find the landlord did not have the ability to find a new tenant for the month of August and as such the tenant must pay the landlord the amount of \$1,475.00. As the unit was re-rented effective September 1, 2013 I find the tenant is not responsible for any additional rental payments.

As the tenancy agreement contained a liquidated damages clause I find that the maximum amount the landlord can claim for costs associated with re-renting the rental

unit is the amount set out in the relevant clause of the tenancy agreement, clause 7. As such, I grant the landlord \$400.00 for these losses despite her claim of \$826.00.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As the tenant failed to return the keys to the landlord on the end date of the tenancy and threatened the landlord that she intended to remove appliances from the rental unit, I find the landlord's action of having the rental unit immediately re-keyed was a justified and reasonable action. I find the landlord is entitled to compensation in the amount of \$173.56.

In regard to the landlord's claim for oil removal product; replacement bulbs; and cleaning of the rental unit, I find that the landlord has failed to provide evidence of the condition of the rental unit at either the start of the tenancy or at the end of the tenancy and as the tenant disputes the landlord's claims for all three items I find the landlord has failed to meet the burden to provide sufficient evidence to establish that these issues resulted from the tenancy. I therefore dismiss this portion of the landlord's Application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,098.56** comprised of \$1,475.00 rent owed; \$400.00 liquidated damages; \$173.56 re-keying charges and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$737.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,361.06**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 25, 2013

