



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, 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 unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain all or part of the security deposit – Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

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 November 1, 2011 with the Parties having mutually conducted a move-in inspection on October 30, 2011. The tenancy was ended by the Landlord for cause which although disputed by the Tenant was ultimately enforced with an order of possession on August 1, 2013.

The Landlord states that on August 1, 2013 a notice was posted on the Tenant's door and that this notice included an opportunity to conduct a move-out inspection on August 3, 2013. The Landlord states that the Tenant was not in the unit on August 3, 2013 and no further opportunity for inspection was offered. The Landlord states that the Tenant was not moved out on that date as some articles were left. The Landlord states that the Tenant was not heard from until August 8, 2013 and that the locks had already been changed as the Tenant failed to return the keys to the unit. The Landlord claims \$75.00 for the cost of the locks.

Rent of \$1,050.00 was payable monthly during the last year of the tenancy. The Landlord states that the Tenant failed to pay for August 2013 rent did not move out of the unit and did not return the keys and that these actions caused the Landlord to lose rental income for August 2013. The Landlord states that the unit was advertised for rent on August 2, 2013 and the unit was rent for September 1, 2013. The Landlord claims \$1,050.00. The Landlord currently holds the security deposit of \$512.50 collected at the outset of the tenancy.

The Tenant states that there was no mention of any move-out inspection offer on the notice of August 1, 2013. The Tenant states that she was all moved out by August 3, 2013 and that nothing was left. The Tenant states that she called the Landlord on August 5, 2013 to arrange a move-out inspection and to return the keys but that the Landlord refused to meet the Tenant. The Tenant denies responsibility for August 2013 rent as the Landlord ended the tenancy and that the Tenant did nothing to cause any loss of rent.

The Tenant does not dispute the following claims of the Landlord that total \$294.60:

- \$89.60 to clean the carpets;
- \$30.00 to clean the drapes;
- \$100.00 to repair a wall; and
- \$75.00 to clean the unit.

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 that the Landlord provided no supporting evidence of an offer to inspect the unit and considering the Tenant's denial that any offer was made, I find that the Landlord has not shown on a balance of probabilities that the Tenant failed to participate in a move-out inspection as offered or that a second offer was made to the Tenant. Further, given the lack of photos or any other evidence to support that the Tenant left belongings that would indicate that the Tenant did not move out of the unit on August 3, 2013 but considering the Tenant's evidence that the Tenant did not attempt to return the keys until August 5, 2013, I find that the Landlord has failed to substantiate that the Tenant remained in possession of the unit past this date. Given that the Landlord ended the tenancy and the Tenant complied with the order of possession, I find that the Landlord has failed to establish that the Tenant caused lost rental income. I find that the Landlord is only entitled to monies for the period that the Tenant was in the unit from August 1 to 5, 2013 inclusive in the amount of **\$169.50**, based on a per diem of \$33.90 times 5 days.

I accept the Tenant's more persuasive evidence that on August 5, 2013 the Landlord refused to meet with the Tenant to take the keys to the unit. I find therefore that the Landlord has not established that the cost of new locks was caused by any act of the Tenant and I dismiss this claim.

As the Tenant has agreed to the remaining claims, I find that the Landlord has substantiated an entitlement to **\$294.60**. As the Landlord has been substantially successful, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$514.10**. Deducting the security deposit of \$512.50 plus zero interest leaves **\$1.60** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit and interest of \$51.50 from the security deposit plus interest in the amount of \$900.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1.60**. 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: November 29, 2013

Residential Tenancy Branch

