



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, 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 two landlords.

The landlord submitted documentary evidence that only one of the tenants was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 15, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the evidence of the landlord, I find that the female tenant has been sufficiently served with the documents pursuant to the *Act*. As the female tenant was the only tenant served I amend the landlord's Application to name only the female tenant as the respondent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; unpaid rent or utilities; for damages or losses resulting from 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on May 6, 2013 for a 2 year and 1 day fixed term tenancy agreement beginning on June 1, 2013 for a monthly rent of \$1,695.00 due on the 1st of each month with a security deposit of \$847.50 and a pet damage deposit of \$847.50 paid. The tenancy ended on September 1, 2013.

The landlord has provided substantial documentary evidence including photographs of the condition of the rental unit at the start and end of the tenancy. From that evidence the landlords claim \$205.80 for carpet cleaning; \$153.80 for cleaning; \$550.00 for painting.

The landlords also seek compensation in the amount of \$100.00 for monies paid to an agent to show the rental unit to potential new tenants; for \$100.00 for the tenant move out fee required by the strata; \$100.00 for the fee charged for the new tenant to move in after this tenancy; and \$200.00 for a strata fine for the tenant breaking a 1 year lease.

The landlords have provided confirmation that tenant move in (\$100.00) and move out (\$100.00) fees are required by the strata and the landlord has been charged these fees. The landlords also have provided evidence that they have an additional fine in the amount of \$200.00 attributed to them but they have provided no evidence from the strata outlining that the \$200.00 is for breaking a 1 year lease or even that the strata requires tenancies to be at least 1 year in duration.

The landlords submit the tenancy ended because the tenants had more animals in the rental unit that is allowed by the strata and that the tenants had failed to inform the landlord of these additional animals.

The landlords submit the tenants originally indicated they would be vacating the rental unit at the end of October 2013 but that they later changed this and moved out before the end of August 2013. The landlords submit the tenants did not pay any rent for September or October 2013. The landlords have provided documentary evidence that they re-rented the unit effective November 1, 2013.

Analysis

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.

Based on the undisputed testimony and documentary evidence of the landlords I find the tenants failed to comply with Section 37 that caused the landlord to incur losses for cleaning; carpet cleaning; and painting as claimed. I find the landlord has established the value of those losses through the receipts submitted.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

As there is no evidence before me that the landlord ended the tenancy, despite the tenant's breach of the tenancy agreement by having more than the allowable number of pets I find the tenants were obligated to end the tenancy in accordance with Section 45(2). As the end of the fixed term tenancy was supposed to be June 1, 2015 I find the tenants are responsible for the payment of rent until the end of the fixed term subject only to the landlord's obligation to mitigate any damages or losses.

As the landlord was able to re-rent the rental unit effective November 1, 2013 I find the tenants are only then obligated for the payment of rent for the months of September and October 2013.

As to the landlords' claim for the costs of hiring someone to show the rental unit as both landlord's do not live in the community that the rental unit is located is a cost of doing business and is not recoverable from the tenants. I dismiss this portion of the landlord's claim.

I find the landlord has established that the tenants were also responsible for the payment of a move out fee in the amount of \$100.00 for vacating the rental the unit as is required under the strata bylaws.

As to the landlords' claim for recovering the move in fee for the new tenants I find that the responsibility for these fees rests with the party moving in to the rental unit and as such is recoverable by the landlord from the tenant that is moving in. As such, I find the landlord is obligated to obtain payment from the new tenants and has therefore not suffered any loss. I dismiss this portion of the landlord's claim.

Finally, in response to the landlords' claim for a \$200.00 fine from the strata for not having a fixed term tenancy of at least one year and/or for failing to keep the tenant in the rental unit for the period of at least one year, I find the landlords have failed to provide any evidence of any such fine.

While I accept the landlords have been fined by the strata for something the documentation submitted does not provide any explanation of what the \$200.00 fines are for and as such, I cannot attribute them to losses resulting from this tenancy. I dismiss this portion of the landlords' claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,449.60** comprised of \$3,390.00 rent owed; \$205.80 carpet cleaning; \$153.80 cleaning; \$550.00 painting; \$100.00 move out strata fees and the \$50.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,695.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,754.60**.

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: January 15, 2014

Residential Tenancy Branch

