



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on September 4, 2013 for:

1. A Monetary Order for unpaid rent – Section 67;
2. A Monetary Order for compensation – 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 Tenant applied on November 27, 2013 for:

1. An Order for the return of the security deposit – Section 38;
2. A Monetary Order for compensation or loss - Section 67; and
3. 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.

Preliminary Matter

At the onset of the hearing the Landlord stated that no claim was being made to retain the security deposit of \$375.00 paid by the Tenants at the outset of the tenancy. The Landlord states that the tenancy ended in August 2013, that rent for August 2013 was paid and that the Landlord is not making any claim for rent past August 2013. Given the Landlord’s evidence, I determined that the Landlord is not making any monetary claim

to monies not already received and in essence has only made a claim for recovery of the filing fee. As the Landlord does not claim the security deposit, I order the Landlord to return the security deposit of **\$375.00** plus zero interest forthwith to the Tenants. As the Landlord's application consists of a defence to the Tenant's claim for return of the rent and not a claim for any compensation or loss, I decline to grant recovery of the filing fee.

Issue(s) to be Decided

Is the Tenant entitled to return of the rent paid for August 2013?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The Landlord states that the Tenants, who were living out of province at the time, responded to the unit's advertisement in July 2013 and arranged to have their parents view the unit in that same month. The Landlord states that the parents viewed the unit in July 2013 while it was still being occupied by the previous tenants and paid the Landlord the security deposit for the unit. The Landlord states that although the Tenants told the Landlord that the first month's rent would be paid on August 1, 2013, this was not paid until August 4, 2013 when the parents returned and viewed the unit again. The Landlord states that the keys to the unit were provided on this date. The Landlord states that the Tenants arrived on August 12, 2013 and told the Landlord, who was present, that the unit was filthy and required cleaning. The Landlord states that he felt that the unit was clean but agrees that some items were not cleaned and other items were not cleaned to the standard expected by the Tenants. The Landlord states that he immediately arranged to have the unit cleaned the next day and that the Tenant agreed to meet again at the unit at 3:00 pm. The Landlord states that the Tenant did not show up and that the Landlord was not able to reach them until later in the evening when the Tenant then informed the Landlord that they were not moving into the unit.

The Tenant states that the Landlord was aware that the Tenants were looking for rent from August 15, 2013 but as the Landlord would not accept this as a tenancy start date

the Tenants agreed to pay for the whole month. The Tenants state that when their parents saw the unit on August 4, 2013, the Landlord was informed of the cleaning that still remained from the previous tenancy. The Tenants provided photos of the unit. The Tenant states that the Landlord was called at 3:00 pm on August 13, 2013 and that the Landlord told the Tenant that the cleaner could not return to the unit for a few hours. The Tenant states that given the issues that had already arose with the tenancy, they decided not to move into the unit as they expected things would become worse. The Tenants states that they were able to immediately find another unit to move into. The Tenant claims return of the rent paid for August 2013.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Given the Parties agreed evidence that a security deposit was paid for the unit, I find that a tenancy agreement was validly entered into in July to start on August 1, 2013 and that the Landlord is therefore entitled to rent for August 2013.

Section 32 of the Act provides that landlord must provide a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant 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 the photos of the unit, based on the agreement of the Landlord that some items were not as clean as could have been, I find on a balance of probabilities that the Landlord failed to provide the Tenants with a reasonably clean and undamaged unit at the start of the tenancy. However given the Tenant's evidence that they were not at the unit until August 12, 2013, the Landlord's undisputed evidence that the unit was cleaned and repaired by August 13, 2013 and considering that the Tenant provided no evidence that they suffered any loss as a result of this delayed cleaning, I find that the Tenant has not substantiated that the Landlord caused the Tenant any loss. Further, I do not find that the Landlord's delay in cleaning the unit is sufficient reason for ending a tenancy without the required notice. I therefore dismiss the Tenant's claim for return of the rent paid for August 2013.

As the Tenants have been partially successful with their application, I find that the Tenants are entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$425.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$425.00**. 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: December 11, 2013

Residential Tenancy Branch

