



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 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 10, 2013 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for damage to the unit – Section 67;
3. An Order to retain the security deposit – Section 38;
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on November 8, 2013 for:

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

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

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

Background and Evidence

The tenancy started on February 1, 2013 on a fixed term to January 31, 2014. On July 11, 2013 the Tenants gave notice to end the tenancy for August 31, 2013 and moved out on that date. Rent of \$1,795.00 was payable monthly and at the outset of the tenancy the Landlord collected \$897.50 as a security deposit and \$897.50 as a pet deposit.

The Landlord states that the unit was advertised on various websites, in local papers and on the unit itself starting September 3, 2013 and again on October 2, 2013 and that the unit has not been rented to date. The Landlord does not know what the rent for the unit was initially advertised at but states that the rent was reduced at some point during the advertisements after a failure to be rented. The Landlord states that the rental market has been terrible. The Landlord claims lost rental income from September 2013 to January 31, 2014 inclusive in the amount of \$7,180.00.

The Landlord states that due to the Tenant's act, the Landlord incurred costs for the advertising and claims the costs of \$206.85. Invoices were provided.

The Landlord states that although the utilities were in the Tenant's names and were disconnected for the end of the tenancy the Landlord claims continuing hydro costs of \$43.14 and gas costs of \$31.64. The Landlord provided a bill for the gas costs only. The Tenants dispute responsibility for these costs.

The Tenant states that the tenancy was ended as the Landlord failed to properly repair a wall that was damaged from a leak that occurred on March 31, 2013 and was completely repaired by April 20, 2013. The Tenant states that after the repairs the drywall turned tacky and a film grew on the surface of the framing. The Tenant states that they lost the use of the master bedroom to the end of the tenancy. The Tenant claims \$1,500.00 for the loss of this space for April, May, June, July and August, 2013.

The Tenant states that in addition the house was always damp and moist and that her child developed an allergy that disappeared after the move. The Tenant states that she was concerned that mold was growing in the unit and decided to move for health and safety reasons. The Landlord states that the wall was completely repaired and that there were no health and safety issues with the unit. The Landlord states that the unit was inspected on July 13, 2013 and that the carpet was dry. The Landlord notes that the dust on the carpet from the repairs in April remained to the end of the tenancy indicating dryness. The Landlord states that there was nothing more to fix. The Landlord states that the Tenants were observed by the Landlord to be using the master bedroom and that the damp area of the rug only initially extended 3 inches from the baseboard. The Landlord also argues that the Tenants should have made an application and obtained an order to end the fixed term tenancy.

The Tenant states that the Landlord had more than sufficient time to obtain a new tenant, that the Landlord should have advertised the unit by July 11, 2013 when notice was received and that the Tenants are not responsible for the lost rental income claimed.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the 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 the Landlord's evidence that the unit was not advertised until September 2013 and that the rental market has been terrible, I find that the Landlord has failed to establish that the Tenant caused the amount of loss claimed. In the circumstances I find that the Landlord is entitled to a reduced amount of \$1,795.00 and that this amount covers the costs of the Landlord's advertising. As the Landlord claims utilities for the period after

the tenancy has ended I find that the Landlord has not substantiated that the Tenant caused this cost and I dismiss this claim. As the Landlord has been substantially unsuccessful with its application I decline to award recovery of the filing fee.

The Tenant's evidence in relation to the loss of the use of a part of the house is very weak and considering the Landlord's evidence of remaining dust from the repairs, I find that the Tenant has failed to establish that the Landlord caused any loss of use of the unit and I dismiss the Tenant's claim for compensation and recovery of the filing fee.

As the Landlord made its application within 15 days of the end of the tenancy, I find that the Tenant's are not entitled to return of double the security deposit. I order the Landlord to retain the combined security and pet deposit of \$1,795.00 plus zero interest in full satisfaction of the Landlord's claim.

Conclusion

I Order the Landlord to retain the security and pet deposit plus interest in the amount of \$1,795.00 in full satisfaction of the claim.

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 23, 2013

Residential Tenancy Branch

