



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLLIERS MACAULAY NICHOLLS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for cleaning and repairs of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing and only one of the Tenants appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

During the course of the hearing the Landlord reduced the claims against the Tenants by \$200.00, withdrawing claims comprised of the cleaning of the carpets and the cleaning of window drapes.

The appearing Tenant agreed to the Landlord's claim of \$100.00 for the bathroom light, the stove, the tiles and the smoke detector.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation for rent from the Tenants?

Background and Evidence

This tenancy began on July 4, 2011, with the parties entering into a written tenancy agreement, although a copy of this agreement was not put into evidence. The rent at the start of the tenancy was \$860.00 and the Tenants paid a security deposit of \$430.00, on or about July 4, 2011. I note that no interest has been collectible on deposits since 2009.

During the tenancy the rent was increased and in the last month of tenancy, July of 2013, the rent payable was \$896.00. The Landlord has claimed the Tenant did not pay rent for July and there had been a balance carried forward from previous months, for a total of \$901.00 in outstanding rent due at the end of the tenancy.

At the beginning and the end of the tenancy the Agent for the Landlord completed condition inspection reports.

The Landlord claims that at the end of the tenancy the Tenant agreed to allow the security deposit to go towards \$300.00 in cleaning for the drapes, carpets, and other items and to the outstanding rent that was due for July of 2013. The Landlord has submitted a copy of the condition inspection report and a ledger detailing the amounts owed by the Tenants. The outgoing report is dated July 30, 2013.

The Agent for the Landlord testified the Tenant signed the document using her initials at the end of the tenancy, at the same time the Tenant was writing her forwarding address on the outgoing condition inspection report.

In reply, the Tenant testified that she had been forced to move out of the rental unit by the Agent for the Landlord. The Tenant testified that she and the Agent for the Landlord had several disagreements during the tenancy. The Tenant testified there was always tension between her and the Agent. The Tenant testified she was not happy with the condition of the rental unit at the start of the tenancy.

The Tenant testified the Agent for the Landlord told her she should move out of the rental unit. The Tenant testified she gave her notice to end the tenancy the same day and then moved out around July 20, 2013.

The Tenant initially testified she did not sign the outgoing condition inspection report; then she testified she did not recall signing or initialing it; and then she testified she may have initialed it, but is not sure as she and the Agent for the Landlord were arguing at the time of the outgoing condition inspection report.

The Tenant testified she and the Agent were arguing at the time, because the Tenant was not agreeing that the carpets or the drapes needing cleaning. The Tenant then testified she was forced to initial the outgoing condition inspection report and alleges the Agent said she could not move out unless she signed.

The Tenant did testify that she did not use a professional cleaner for the carpets, but cleaned these, as well as the drapes, by herself.

The Tenant testified she did not pay the July rent because the Agent for the Landlord told her to move out. The Tenant wanted to claim against the Landlord for this and offset the amount the Landlord is claiming against her.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants did not pay rent and had no authority to withhold rent. Under section 26 of the Act the Tenants must pay rent, unless there is authority under the law for them not to. Section 26 states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Reproduced as written.]

I find the Tenants did not establish any right to deduct all or a portion of the rent, and had no order from an Arbitrator allowing them to not pay rent. Therefore, I find the Tenants breached the Act and the tenancy agreement by failing to pay rents when due, and I order the Tenants to pay the Landlord the sum of **\$901.00** in unpaid rents. I find the Landlord has established the loss and mitigated this by filing a claim against the Tenant.

It was explained to the Tenant during the hearing that the Landlord could not give an oral eviction, and that the Landlord was required to use a Notice to End Tenancy in the approved form. The Tenant gave her own Notice to End Tenancy to the Landlord and therefore, the Tenant ended the tenancy in this situation, not the Landlord.

It was further explained to the Tenant that if she had claims about the rental unit that she should have filed her own Application for Dispute Resolution, as she is not able to make her own claims through the Landlord's Application.

As the Tenant agreed that she owed the Landlord \$100.00, I order the Tenants to pay this sum to the Landlord.

Based on the often contradictory testimony of the Tenant, I find it more likely than not, that the Tenant did initial the outgoing condition inspection report agreeing that the Landlord may keep the security deposit against the claims being made in the report. While the Tenant may not have agreed to the cleaning and other claims, I find she did initial the report indicating the Landlord could keep the security deposit toward the items listed.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Therefore, I find that the Landlord has established a total monetary claim of **\$1,051.00** comprised of \$901.00 in unpaid rents, \$100.00 as the amount agreed to by the Tenant for cleaning etc., and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit of **\$430.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$621.00**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants breached the Act and Tenancy Agreement by failing to pay all rents due. The Tenant agreed to a \$100.00 charge from the Landlord as set out in the condition inspection report, and I find the Tenant initialled the condition inspection report agreeing that the Landlord could retain the security deposit towards amount owed by the Tenants.

The Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due of **\$621.00**.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 24, 2014

Residential Tenancy Branch

