



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the unit, site or property; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord submitted that she received the tenants' forwarding address on November 2, 2013 and on November 12, 2013 she filed her Application for Dispute Resolution and sent the hearing documents to each tenant at their forwarding address via registered mail sent on November 12, 2013. I was satisfied the tenants were duly served and with the landlord's hearing documents and I continued to hear from the landlord without the tenants present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord submitted that on July 15, 2013 the parties entered into a verbal tenancy agreement and a security deposit of \$425.00 was collected. The tenancy was set to commence August 1, 2013 for a fixed term of one year. The parties agreed that the tenants would pay rent of \$890.00 on the 1st day of every month, including use of a portion of the garage. The landlord had been using the garage for her own use but re-arranged it and installed a partition in order to provide a portion of it to the tenants.

The landlord prepared a written tenancy agreement but requests for the tenants' signatures were unsuccessful. The landlord left the tenancy agreement in the rental unit. The tenant advised the landlord on August 20, 2013 that they wanted to wait until after September 10, 2013 to sign the tenancy agreement. The tenants moved in on

August 22, 2013. On or about September 10, 2013 the tenant verbally informed the landlord they were moving out at the end of September 2013, which they did.

The landlord testified that she was able to re-rent the unit November 1, 2013 for a one-year term at \$900.00 per month.

The landlord is seeking compensation from the tenants for the following:

1. Rent for the month of October 2013 since the tenants did not give one month's notice to end the tenancy: \$ 890.00
2. Carpet cleaning since the tenants had a pet living with them in the unit: \$90.00
3. Repair of gouges in bedroom wall and front door casing: \$60.00
4. Removal of phantom screen door so tenants could move their furniture out of the unit: \$35.00
5. Removal of garage partition: \$240.00
6. Loss of rent for July 15 - 31, 2013 since unit was vacant and landlord agreed to wait until August 1, 2013 to start the tenancy since tenants agreed to one year fixed term: \$445.00

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

The Act applies to residential tenancy agreements whether the tenancy agreement is written; verbal; express or implied. The Act also provides that a security deposit must not be collected unless a tenancy has formed. Based upon the submissions before me, I find a verbal tenancy agreement formed on July 15, 2013 for a tenancy set to commence August 1, 2013 for the monthly rent of \$890.00 due on the 1st day of every month.

Where a landlord and a tenant enter into a fixed term tenancy, the Act requires that the parties agree upon what is to happen at the end of the fixed term. I note in the landlord's written submission she does specify what was agreed upon with respect to what was to happen at the end of the fixed term; and, the unsigned tenancy agreement does not satisfy me as to what the parties agreed upon. In the absence of clear evidence showing the parties agreed upon a fixed term and what was to happen at the end of the fixed term, I find insufficient evidence to conclude all of the requirements of a fixed term tenancy agreement were met. As I am unsatisfied a fixed term tenancy formed, I hold the tenants responsible for fulfilling obligations pursuant to a periodic

tenancy (ie: month to month). I also note, the landlord requested rent for October 2013 due to the tenants not providing one month of notice, which is consistent with a month-to-month tenancy.

When a tenant wishes to end a month-to-month tenancy, the Act requires the tenant to provide the landlord with at least one full month of written notice. As the tenants failed to provide such notice to the landlord, I find the landlord entitled to loss of rent for the month of October 2013 in the amount of \$890.00.

The Act provides that a tenant must leave a rental unit reasonable clean at the end of the tenancy. Residential Tenancy Policy Guideline 1 provides that a tenant is responsible for carpet cleaning, regardless of the length of their tenancy, if they had a pet in the rental unit. Since the tenants had a pet in the unit, I grant the landlord's request to recover carpet cleaning from the tenants in the amount of \$90.00.

The Act provides that a tenant is responsible for repairing damage they cause to the rental unit during their tenancy. Based upon the undisputed evidence before me, I am satisfied the tenants damaged the wall and casing during the tenancy and the landlord is entitled to recover \$60.00 for costs associated with repairing the wall and casing.

I deny the landlord's request to recover the cost of removing the screen door at the end of the tenancy. A tenant has an expectation that they will be able to move furniture through a doorway and if the landlord has installed a phantom screen door that obstructs movement of larger furniture I find it reasonable to expect that the landlord remove the screen door as necessary. Further, I heard from the landlord that she had the screen door removed when the tenants moved in, at no cost to the tenants, so I find it reasonable that they would have the same expectation when they moved out unless the landlord expressly notified them otherwise. I was not provided any evidence to suggest the landlord notified the tenants that any other removals of the screen door would be at their cost or that they agreed to pay for its removal when they asked the landlord to remove it at the end of September 2013.

I make not award for removal of the garage partition. The landlord installed a partition in order to provide agreed upon storage space to the tenants. When the tenancy ended the landlord could have left the partition in place and provided storage to subsequent tenants; however, the landlord chose to remove the partition so as to recover the entire space for her own use. The tenants had no control or influence upon the landlord's choice as to what to do with the garage space at the end of the tenancy. Therefore, I find the landlord made a choice based upon her own needs and preferences and cost associated with that choice is hers to bear.

I make no award for loss of rent for the period of July 15 – 30, 2013 since the landlord established that the tenancy agreement was set to commence August 1, 2013 and the landlord cannot subsequently back date the commencement of the tenancy.

As the landlord's claim had some merit, I award the landlord recovery of the filing fee she paid for this Application. I also authorize the landlord to retain the tenants' security deposit in partial satisfaction of the unpaid and/or loss of rent for the month of October 2013.

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent: October 2013	\$ 890.00
Carpet cleaning	90.00
Wall and casing repair	60.00
Filing fee	50.00
Less: security deposit	<u>(425.00)</u>
Monetary Order	\$ 665.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$665.00 to serve and enforce as necessary.

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: March 25, 2014

Residential Tenancy Branch

