



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC

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 landlord's agent and the tenant's agent.

At the outset of the hearing I clarified with the landlord's agent the details of her claim. The landlord's Application for Dispute Resolution indicated that the total claim was for \$5,000.00 and included claims for lost rent for November 2013 in the amount of \$2,000.00; lost income for December 2013 in the amount of \$2,000.00.

In addition the landlord had outlined in her claim that the property had been left filthy and damaged and by way of evidence had submitted receipts for cleaning and repairs totalling \$3,441.50. As such the total of the claim was \$7,441.50.

However as the original claim served on the tenant indicated a maximum claim of \$5,000.00 I allowed the landlord to reduce the claim by removing specific items listed in the claim to limit the maximum amount of the claim to \$5,000.00.

In response the landlord restricted her claim to lost rent for the month of November 2013 for \$2,000.00; painting for \$1,942.50; and hauling garbage from the site for \$1,000.00 for a total claim of \$4,942.50.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage to and cleaning of the residential property; and for all or part of the security deposit, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree that the tenant has been living in the rental unit through the course of three separate tenancy agreements. The first agreement named a different person as the tenant and began in April 2010. The parties agree the respondent tenant moved into the property during this tenancy.

The parties further agree that in September 2012 the originally named tenant in the tenancy agreement moved out of the residential property and another person was named as the tenant on the tenancy agreement until he moved out in July 2013. As a result, on August 5, 2013 the respondent tenant was the named tenant on the tenancy agreement.

The final tenancy agreement was submitted into evidence that confirms a monthly rent of \$2,000.00 due on the first day of each month. The parties agree that the security deposit of \$950.00 had been transferred between tenants through the three different agreements that had transpired.

The landlord submits that a move in condition inspection and report was completed at the start of the first tenancy with the first tenant and a move out condition inspection was completed at the end of the third tenancy agreement with the respondent tenant.

The landlord submits that she asked the respondent tenant to identify any problems with the unit at the time that he took over the tenancy. However, the landlord confirms that a move out inspection was not completed when the first tenant or the second tenant moved out of the unit, because the unit was never vacant during those changes.

The landlord has provided copies of both Condition Inspection reports; photographic evidence showing the condition of the unit prior to the start of the original tenancy and the end of the final tenancy; and receipts for work completed.

The landlord seeks compensation for repairs of walls; ceilings in the basement and the living room as well as painting throughout the rental unit in the amount of \$1,942.50. In addition that landlord seeks compensation for the removal of garbage from the property in the amount of \$1,000.00.

The tenant's agent submits that some of the damage to the rental unit was already there before the tenant took over responsibility for the tenancy. The tenant's agent did not provide testimony regarding whether or not the tenant identified any damage to the landlord at any time during his residency in the rental unit, including at the start of the tenancy that he was responsible for.

The landlord submits that the tenant provided her, on October 1, 2013, with verbal notice of his intention to end the tenancy on November 1, 2013 and that he moved out of the unit on November 2, 2013.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As rent was due, under the tenancy agreement, on the 1st of each month the landlord was required under Section 45(1) to provide his notice to end his tenancy before the 1st of the month to be effective the end of that month.

Since the tenant provided notice to the landlord on October 1, 2013 the earliest the tenancy could end was November 30, 2013. As such, I find the tenant is responsible for the payment of rent for the month of November, 2013 in the amount of \$2,000.00.

Section 23 of the *Act* requires a landlord and tenant to inspect the rental unit on the day the tenant is entitled to possession of the unit. While there is no requirement that the unit be vacant at the time of the inspection I recognize that it would have been difficult for the landlord to complete an inspection when each of the tenancy agreements changed.

However, as the respondent tenant lived in the rental unit for all three of the tenancies I find that he would have an intimate knowledge of the rental unit throughout all three tenancies and in fact, based on the balance of probabilities may have contributed to the condition of the unit prior to taking over responsibility for the tenancy.

In addition, as each of the tenants simply passed the security deposits on between themselves, I find the tenant then accepted the original tenant's obligations for the

condition of the rental unit and as such is not obligated for the condition of the rental unit.

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.

I find the landlord has provided sufficient evidence to establish that the respondent tenant is responsible for damage beyond reasonable wear and tear that caused to the landlord to complete repairs and paint the unit. I find the landlord has established the value of this work through her receipts.

In addition, I find the tenant failed to remove garbage from the rental unit as evidenced by the landlord's photographic submissions. I note that this obligation is not contingent on the condition at the start of this tenancy but rather solely on the fact the tenant failed to leave the residential property reasonably clean. I find the landlord has also established the value of this claim through her submitted receipts.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,992.50** comprised of \$2,000.00 rent owed; \$1,942.50 repairs and painting; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$950.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$4,042.50**.

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: March 28, 2014

Residential Tenancy Branch

