



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Realty Executives Vantage, J.O.T. Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – MNSD

For the landlord – MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover the security deposit. The landlord applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision..

Issue(s) to be Decided

- Is the tenant entitled to recover the security deposit?
- Is the landlord entitled to a Monetary Order for damage to the unit site or property?

- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy was due to commence on December 01, 2013 for a fixed term tenancy ending November 30, 2014. Rent for this unit was agreed at \$900.00 per month due on the first of the month and the tenant paid a security deposit of \$450.00 on November 29, 2013.

The tenant testifies that she did a walkthrough of the property with the landlord's agent when the tenant viewed the property. The tenant testifies that the landlord's agent allowed the tenant to pull up a corner of the living room carpet as the tenant wanted to see what the flooring was like underneath. The tenant testifies that nothing was noted at that time with that corner of the flooring. However the tenant testifies that she returned to the unit on November 29, 2013 to clean the unit and get it ready for the move. The tenant decided to pull up the living room carpet as it was old and had some pulls. At that time the tenant saw that there were rotten spots and mould on the flooring underneath and the back of the carpet was mouldy. The tenant testifies that she did attempt to bleach this clean but suffered from an asthma attack so had to leave the building. The tenant testifies that as this was the first asthma attack she had suffered in seven years the tenant put it down to the unit having mould issues.

The tenant testifies that the landlord's agent had given the tenant permission to do some minor renovations in the unit at the tenant's own expense. However, nothing was agreed as to what work the tenant was going to do. The tenant testifies that there were also issues with wood bugs which are often attracted to mouldy or moist areas. The crawl space was full of garbage and the water tank had leaked and there had been an issue with an exploding light bulb. The water tank was replaced by the landlord, the

garbage in the crawl space was removed and the landlord's handyman recommended that the landlord get in an electrician to inspect the house.

The tenant testifies that she gave the landlord Notice on November 30, 2013 that she was not going to be moving into the unit due to the condition of the unit. The tenant testifies that she provided a forwarding address on December 09, 2013.

The landlord disputes the tenants claim. The landlord testifies that the tenant was aware that the carpets were booked to be cleaned three hours before the tenant got the keys. The landlord testifies that they would not have done this if they had given the tenant permission to pull up the carpets. The landlord testifies that when the landlord purchased this home the carpets were already in place and the landlord had no idea of the condition of the flooring underneath the carpets. The landlord testifies that if the tenant had not pulled up the carpets then the flooring would have been left intact as the carpets were in a reasonable condition that would not impact on the tenant. The landlord testifies that they had a moisture test conducted in the home and no unusually high levels of moisture were detected. A restoration company also checked the home for mould and determined that no mould was present.

The landlord testifies that a light bulb did not explode; however, when the handyman was changing some bulbs, two did pop so he informed the landlord that he was not comfortable with the electrics in the home. The landlord then sent in an electrician to look at the electrics and this electrician attempted to get into the unit three times on November 30, 2013 but the tenant was not there. This work has since been completed. The water tank was replaced prior to the tenancy and the garbage was all removed from the crawl space.

The landlord seeks to recover the cost of refitting the carpet. The tenant had removed the carpet and dumped it outside. The landlord was able to rescue the carpet and this was refitted at a cost of \$157.50. The landlord has provided an invoice for this amount in evidence.

The landlord testifies that this was a fixed term tenancy and the tenant broke the lease. The tenant had signed an agreement to rent the unit until November 30, 2014. This is documented on the tenancy agreement so the tenant would have been aware that she would be held responsible for any rent until the unit was re-rented or the end of the fixed term. The landlord testifies that the unit was re-rented on December 15, 2013 and therefore the landlord seeks a loss of rental income for the first half of December of \$450.00.

The landlord testifies that the tenancy agreement also stipulates that the landlord will charge the tenant liquidated damages for any administrative costs incurred in re-renting the unit. The landlord seeks to recover \$367.50 for administrative fees and placement fees for the new tenants.

The landlord also seeks to recover \$100.00 for the cost of preparation of the hearing documents. The landlord testifies that this took four hours work and the owner of the home was charged \$25.00 per hour for the four hours. The landlord testifies that the landlord also seeks to recover the costs incurred for sending documents to the tenant by registered mail of \$12.13 and for photocopies of \$3.75.

The landlord seeks an Order to keep the security deposit of \$450.00 in partial satisfaction of their claim.

The tenant testifies that the evidence provided by the landlord concerning mould is simply the opinion of the technician as no proper testing was carried out. The tenant disputes the landlords claim in its entirety.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover the security deposit, the tenant has the burden of proof to show that the rental unit was not fit for occupation and that

the tenant was forced to terminate the agreement due to the landlords none compliance with s. 32 of the *Act*. The tenant has provided some photographic evidence showing the carpets pulled back and some with the carpets removed. While I agree that the flooring underneath the carpets is in a poor condition I can see no evidence of mould or rotting flooring that would constitute a breach of s. 32 of the *Act*. If the carpets had been left in place by the tenant this old flooring would not have posed a problem and I see no evidence that the carpets contained mould and they appear to be in a reasonable condition.

Some of the tenant's photographic evidence does show some other areas of the unit with old pipe work and areas of the walls in disrepair. However this alone would not constitute a valid reason for the tenant to terminate the tenancy. The other work concerning the water tank and electrics were repaired prior to the date, or soon after, that the tenancy was due to start. Consequently, I find that the tenant has not met the burden of proof in this matter and the tenants claim to recover the security deposit is dismissed.

With regard to the landlords claim to recover the costs incurred to refit the carpet; I find there is no evidence from the tenant to show that the landlords gave the tenant permission to take out the carpet. The landlord has met the burden of proof to show the tenant was responsible for removing the carpet and for the actual costs incurred to refit the carpet. Consequently, the landlord has established a claim to recover the costs to have the carpet refitted of **\$157.50**.

With regard to the landlords claim for a loss of rent; I find the landlord has established that this was a fixed term tenancy. When the tenant signed the tenancy agreement the tenant became bound by the terms of that agreement. As I have found the tenant has not proven that there were grounds to end the tenancy prior to the end of the fixed term then the tenant is responsible to pay rent for the unit up to the end of the fixed term or up to the date that the unit is re-rented. In this case the landlord mitigated the loss by getting the unit re-rented by December 15, 2013 therefore losing only half a month's

rent for December. Consequently it is my decision that the landlords are entitled to recover a loss of rent for December of **\$450.00**.

With regard to the landlords claim for liquidated damages due to the tenant breaking the lease; the tenancy agreement s. 12(4) informs the tenant that the landlord will make a charge for fees incurred for re-renting the unit in the form of liquidated damages if the tenant breaks the lease before the term expires. Although the landlord has not included a pre-estimate of these fees to be charged I find the fee the landlord has charged of **\$367.50** to be reasonable for administrative fees and for the costs incurred to place new tenants in the rental unit. I therefore uphold this section of the landlords claim.

With regard for the landlords claim for further charges to the tenant of \$100.00 for four hours work in preparation of hearing documents, registered mail fees of 12.13 and for photocopies of \$3.75; there is no provision under the *Act* for fees of this nature to be awarded to a landlord. Consequently, these sections of the landlords monetary claim are dismissed.

As the landlord has been partially successful with their claim I find the landlord may recover the **\$50.00** filing fee from the tenant. The landlord is ordered to keep the security deposit of **\$450.00** and this amount has been offset against the landlord's monetary claim. A Monetary Order has been issued to the landlord for the following amount pursuant to s. 67 and 72(1) of the *Act*:

Refitting the carpet	\$157.50
Loss of rent for first half of December	\$450.00
Liquidated damages	\$367.50
Filing fee	\$50.00
Less security deposit	(\$450.00)
Total amount due to the landlord	\$575.00

Conclusion

The tenant's application is dismissed without leave to reapply

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$575.00**. The Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial Court 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 27, 2014

Residential Tenancy Branch

