



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MND MNR MNSD MNDC FF

Introduction

This hearing dealt with the landlord's application for an order of possession, a monetary order and an order to retain the security deposit in partial compensation of the claim. The landlord and the tenant participated in the teleconference hearing.

The landlord and the tenant confirmed that the tenant was no longer occupying the rental unit, and I therefore did not consider the portions of the landlord's application regarding an order of possession.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on July 1, 2013, with monthly rent in the amount of \$1200. The rental unit was the upper floor of a house. The lower suite was vacant and the landlord was renovating it, as well as the rear porch and stairs, during the tenant's occupation of the upper unit. At the outset of the tenancy the tenant paid the landlord a security deposit of \$600. On December 19, 2013 the landlord served the tenant with a notice to end tenancy for repeated late payment of rent. The effective date of the notice was January 31, 2014. The tenant did not pay January 2014 rent, and on January 2, 2014 the landlord served the tenant with a notice to end tenancy for unpaid rent. The effective

date of this notice was January 15, 2014. The tenant vacated the rental unit on January 15, 2014. The landlord re-rented the unit beginning March 1, 2014.

Landlord's Claim

The landlord stated that on January 15, 2014 the tenant did not show up for the move-out inspection or give the landlord her forwarding address in writing. The tenant had not cleaned the unit or yard, and there were minor damages that required touch-ups. The landlord acknowledged that there were materials for the deck that the landlord had left in the back yard as well as the tenant's stuff. The landlord stated that they did do a move-in condition inspection report with the tenant at the beginning of the tenancy; however, they did not submit a copy of that report in their evidence.

The landlord claimed the following compensation:

- 1) \$1200 rent for January 2014;
- 2) \$1200 lost revenue for February 2014 – the landlord stated that they had potential renters show up to look at the unit and the tenant would scare them off by saying the landlords are terrible people and the place is toxic and falling apart. In support of this portion of their application, the landlord submitted text messages from the tenant to the landlord; however, the tenant's texts do not appear to contain any threats of turning renters away;
- 3) \$50 for two late rent fees of \$25 each for December 2013 and January 2014 – the addendum to the tenancy agreement contains a clause that indicates any late or NSF cheques may result in a \$100 penalty;
- 4) \$450 for paint, materials and labour to repair damages to rental unit – in support of this portion of their application the landlord submitted photographs of dirty and damaged areas of the rental unit;
- 5) \$250 for an estimated four hours to clean up yard, plus materials and dump fees – in support of this portion of their application the landlord submitted photographs of the yard; and
- 6) \$745.04 for various costs associated with serving notices and engaging in the dispute resolution process.

Tenant's Response

The tenant stated that she should not have to pay rent for the second half of January 2014, as she was not living there by then. The tenant disputed the lost revenue for February 2014, stating that no tenants ever came by. The tenant disputed the claims for damages and yard clean up, as the landlord wrote up their claim on January 13, 2014,

before the tenant had even moved out of the unit; the landlord did not do a move-in condition inspection report; and the landlord cleaned up his own materials in the yard. The tenant disputed the landlord's claim for compensation for serving notices and for costs associated with the dispute resolution process.

Analysis

I find that the landlord is entitled to \$600 for rent for January 1 to 15, 2014. The tenancy ended on the effective date of the notice, January 15, 2014, which is also the date the tenant vacated the unit; therefore, any monies claimed after that date would be for lost revenue, not rent. I find the landlord is not entitled to lost revenue as claimed because they failed to provide sufficient evidence that they took reasonable steps to attempt to re-rent the unit as soon as possible. I do not find any evidence to support the landlord's claim that the tenant scared off potential renters. The landlord is not entitled to the amount claimed for late rent, as the maximum amount that may be claimed for late rent or NSF cheques is \$25 per month, and the clause in the addendum allowing for a penalty of \$100 violates the Act and is therefore void.

The landlord is not entitled to the amounts claimed for damage, as they did not submit a move-in condition inspection report to establish the condition of the unit at the outset of the tenancy. Nor is the landlord entitled to the amount claimed for clean up, as the landlord only provided an estimate before the tenancy had even ended, and the landlord acknowledged that some of the materials in the yard did not belong to the tenant.

The landlord is not entitled to their costs for doing business as a landlord. Furthermore, the only recoverable cost associated with the dispute resolution process is the filing fee, and the landlord is therefore not entitled to any other costs incurred through engaging in dispute resolution.

As the landlord's application was mostly unsuccessful, I find they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The landlord is entitled to \$600. I order that the landlord retain the \$600 security deposit in full compensation of this amount.

The remainder of the landlord's application is dismissed.

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 11, 2014

Residential Tenancy Branch

