



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on March 1, 2013 on a fixed term to February 28, 2014. Rent of \$900.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit.

The Landlord states that the Tenants failed to give a month’s notice to end the tenancy and moved out of the unit on November 30, 2014. The Parties agree that November 2013 rent has not been paid. The Landlord claims \$900.00 for unpaid November 2013 rent.

The Landlord states that the unit was advertised on craigslist a week after the Tenants moved out. The Landlord states that the unit was advertised with the rent increased to \$1,000.00 per month and only for a short term of three months. The Landlord states that they had to make renovations to the unit so could only offer a three month lease. The Landlord states that the advertisement was removed in the middle of January 2014 as it was apparent that no renter would be found at this point. The Landlord claims lost rental income for December to February 2014 inclusive.

The Tenants state that about month prior to the end of the tenancy they called the city offices to enquire about garbage pickup. The Tenants states that they could not place their garbage in the city garbage bins for collection as the Landlord kept them in the garage and unavailable to the Tenants. The Tenants states that they were taking their own garbage to the dump. The Tenant states that due to this call, the Tenants were informed by a city inspector that the units were not legal suites and that the city would do an inspection of the house. The Tenant states that the inspector informed the Tenants that they would have to move out within two weeks. The Tenant states that given the problems with the garbage and additional problems, they decided to move out of the unit. The Tenants state that the city ordered the Landlord to remove one of the units and so it would have been impossible for the Landlord to have legally rented the unit so the advertisement for a tenant was useless. The Tenant provided copies of letters in relation to the city's directions on the unit.

The Landlord states that only one suite had to be removed and that the Tenants should not have decided that their unit was the one that would be removed.

The Parties agree that the unit was not cleaned by the Tenant at move-out. The Landlord claims \$150.00- but cannot recall exactly how much the cleaning company cost. The Landlord states that the Tenants failed to return the keys and had to change the locks of the unit. No invoice was provided. The Tenant states that the keys were left in the Landlord's mailbox.

The Landlord states that the Tenants signed an addendum requiring them to pay \$100.00 every second month for utilities. The Landlord did not provide a copy of the addendum. It is noted that the tenancy agreement does not include the provision of heat or electricity. The Landlord claims \$300.00 for unpaid utilities for the period November 2013 to January 2014 inclusive. The Tenant does not recall any addendum and states that the Landlord told the Tenants to pay this amount and the Tenants did so.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement.

Accepting the undisputed evidence in relation to city directions on the unit I find that the Landlord had until mid January 2014 to carry out renovations to remove one of two units. I also find it likely, given the scope of the directions on the renovations that the Landlord would have had to end one of the two tenancies by December 31, 2014. Considering that the Tenant was obligated to the end of February 2014 and the unit was available to the Tenant to at least December, 2014, I find that the Landlord has substantiated unpaid rent for December 2013. Based on undisputed evidence that November 2013 rent was also unpaid, I find that the Landlord is entitled to a total amount of **\$1,800.00** in unpaid rent.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Although the Tenants' act to end its tenancy may have influenced the choice of which unit was to be removed, I accept the Landlord's evidence of repairs to the unit and the restriction of the re-rental of the unit to indicate that the Landlord made that choice to

remove the Tenant's unit or make other renovations to meet legal requirements. As a result, I dismiss the remaining claim for lost rental income.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Considering the Parties agreement that the unit was left unclean, I find that the Landlord has substantiated an entitlement to compensation for the cost of the cleaning. Given the lack of an invoice however I find that the Landlord has only substantiated a nominal amount of **\$100.00**. Given the Tenant's evidence of the return of the keys and considering that the Tenant's unit was to be removed, I find that the Landlord has failed to substantiate that the Tenant caused the Landlord to change the locks to the unit and I dismiss this claim.

Given the tenancy agreement that does not indicate the provision of utilities and the Parties evidence of undisputed payment of \$100.00 every second month, I find that the Tenants agreed to add this, minimally oral, term to the tenancy. However considering that the tenancy ended November 2013, and without any evidence of which month the utilities were last paid, I find that the Landlord has not substantiated the amount claimed and I therefore dismiss this claim.

As the Landlord's application has met with success, although limited, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,950.00**. Deducting the security deposit of \$450.00 plus zero interest leaves **\$1,500.00** owed by the Tenants to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$450.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1,500.00**. If necessary, this order may be filed in the Small Claims Court and 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

