



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MND, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for unpaid rent, loss of income, cost of repairs and cleaning and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, loss of income, cost of repairs and cleaning and for the recovery of the filing fee?

Background and Evidence

The tenancy started on December 01, 2012 for a fixed term of one year. The monthly rent was \$1,000.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$500.00 and a pet deposit of \$500.00. The landlord filed a copy of the tenancy agreement according to which the tenant was responsible for the cost of water, sewer and garbage as charged by the local municipality.

On October 08, 2013 the tenant moved out after having given the landlord verbal notice sometime in September. The tenant agreed that she did not pay rent for October. The tenant also agreed that she owed for City utilities. The landlord filed copies of the invoices and the tenant agreed to the amount that the landlord was claiming towards City utilities.

The landlord testified that the rental unit was left in a dirty condition and she had to have the carpets shampooed and the walls patched.

The landlord is claiming the cost of cleaning, steam cleaning the carpets and patching holes in the walls. The landlord filed receipts to support her claim but did not file any photographs to show the condition of the unit.

The landlord stated that the tenant left the keys in the mail box and therefore was not present at the time of the move out inspection. The landlord filed a copy of the inspection report which documented her observations of the condition of the rental unit at the end of tenancy.

The tenant stated that the rental unit was cleaned prior to moving out and filed photographs of the condition of the rental unit. The photographs show the presence of the carpet steamer rented by the tenant and the carpets with markings that are consistent with steam cleaning. The photographs also show that the appliances, drawers, washrooms and floors were clean.

The tenant stated that soon after she moved out on October 08, 2013, a new tenant moved into the rental unit. The tenant stated that she drove by the rental unit and there were cars parked outside and the lights were on inside the unit. The tenant filed a letter written by the neighbour that states that the new occupants moved in prior to October 15, 2013.

The landlord denied having occupants in the rental unit in October. She stated that they moved in, in November and started paying rent from November 15, 2013. The landlord stated that shortly after the tenants moved out, she asked the new occupants to park their cars outside the rental unit and leave the lights on, so that the house would appear occupied and accordingly deter vandals and thieves from breaking in. The landlord maintained that the new occupants started paying rent on November 15, 2013.

The landlord is claiming the following:

1.	Rent for October	\$1,000.00
2.	Rent for November	\$1,000.00
3.	City utilities	\$229.85
4.	City utilities	\$159.39
5.	Steam clean carpets	\$180.00
6.	Clean entire house	\$270.00
7.	Patch holes in walls	\$50.00
8.	Filing fee	\$50.00
	Total	\$2,939.24

Analysis

1. Rent for October - \$1,000.00
2. Rent for November - \$1,000.00

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, the tenant was in a fixed term tenancy ending November 30, 2012. The tenant moved out on October 08, 2013 and therefore breached the terms of the tenancy agreement. The landlord mitigated her losses by advertising the availability of the rental unit, and was successful in finding a tenant.

Both parties offered contradictory testimony regarding the date the new occupants moved in. The tenant stated that the new occupants moved in prior to October 15, 2013. The landlord stated that the new occupants did not move in but parked their vehicles and left the lights on at her request. The landlord stated that the new occupants started paying rent from November 15, 2013.

Based on the testimony of both parties, I accept the landlord's evidence that that the new occupants parked their cars and left the lights on, starting in the middle of October. However, I find that on a balance of probabilities it is more likely than not that a person who parks a car outside a home will be staying in the home rather than parking a car and walking to different location. Besides the landlord agreed that there were two cars parked outside which makes it even more likely that the owners of the cars were occupying the rental unit.

Based on the above, I find that it is more likely than not that the rental unit was occupied by new tenants effective October 15, 2013 and therefore the landlord did not suffer any loss of income after this date. The tenant agreed that she did not pay rent for October and therefore I find that the landlord is entitled to rent for October 01 to October 15 in the amount of \$500.00. The tenant is not liable for rent after October 15, 2013.

3. City Utilities - \$229.85
4. City Utilities - \$159.39

The tenant agreed that she owed these amounts and therefore I find that the landlord has established a claim for the cost of City utilities.

5. Steam clean carpets - \$180.00
6. Clean entire house - \$270.00
7. Patch holes in walls - \$50.00

The tenant filed photographs that depict a clean rental unit with steam cleaned carpets. The tenant also filed a photograph of a hole that he had patched up and had discussed the finishing of the patch with the male landlord. The tenant testified that the landlord agreed to touch up the paint as he had the some of the paint left over. The tenant stated that the move in inspection mentions holes in the walls that were present at the start of tenancy.

The landlord filed receipts for steam cleaning, patching the wall and general cleaning. The receipts lack the basic elements of a receipt. There is no name, phone number, tax amount or business number. Based on the photographs filed by the tenant that show the condition of the unit and upon reviewing the content of the receipts filed by the landlord, I find that prefer the tenant's testimony regarding the condition of the unit after the tenancy ended. Therefore the landlord's claim for the cost of the above three items is dismissed.

8. Filing fee - \$50.00

The landlord has proven a portion of her case and is therefore entitled to the filing fee of \$50.00

Overall the landlord has established a claim as follows:

1.	Rent for October	\$500.00
2.	Rent for November	\$0.00
3.	City utilities	\$229.85
4.	City utilities	\$159.39
5.	Steam clean carpets	\$0.0
6.	Clean entire house	\$0.00
7.	Patch holes in walls	\$0.00
8.	Filing fee	\$50.00
	Total	\$939.24

The landlord has in her possession a security deposit of \$500.00 and a pet deposit of \$500.00. I order that the landlord retain \$939.24 from the deposits and return \$60.76 to the tenant within 15 days of receipt of this decision.

Accordingly I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$60.76. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Amended Decision - March 06, 2014

On February 27, 2013, the landlord applied for a correction to the amount of the monetary order awarded to the tenant, to include the cost incurred by her to advertise the availability of the rental unit. The landlord provided proof of having paid \$47.61 plus GST for a total of \$49.99 to place an advertisement in the local newspaper, in October 2013. Based on the testimony of both parties, I find that the landlord is entitled to recover the cost of advertising. Accordingly, I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$49.99

Conclusion

I grant the tenant a monetary order in the amount of **\$60.76**.

I grant the landlord a monetary order in the amount of \$49.99.

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: February 13, 2014

Amended on March 06, 2014

Residential Tenancy Branch

