



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Landmark Realty Mission Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the tenant's security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. The landlord's agent called in and participated in the hearing. The tenant did not attend although she was served with the application and Notice of Hearing, sent by registered mail on December 20, 2013

Issue(s) to be Decided

Is the landlord entitled to a monetary award for lost rental income and for the cost of cleaning and repairs and if so, in what amount?

Is the landlord entitled to retain the security deposit?

Background and Evidence

The rental unit is a suite in a residential property. The tenancy began on February 1, 2011 for a one year fixed term ending January 31, 2012 with rent in the amount of \$1,000.00 payable on the first of each month. The tenant paid a \$500.00 security deposit on January 14, 2011. The tenancy proceeded by way of a succession of fixed term agreements thereafter. The last was for a term to end on January 31, 2014.

In November, 2013 the tenant notified the landlord that she intended to move out of the rental unit at the end of November. The tenant moved out and the landlord and the tenant conducted a condition inspection on December 2, 2014. The tenant acknowledged the condition of the rental unit and agreed to apply the security deposit to rent for December.

The landlord's representative testified at the hearing that the landlord gave the tenant a Notice of Rent Increase dated February 19, 2013, raising the monthly rent from \$1,000.00 per month to \$1,038.00 per month effective June 1, 2013. The tenant

commenced to pay the increased rent effective June 1, 2013. At the hearing the landlord's representative acknowledged that the rent increase should not have been given, based on the fact that a new fixed term tenancy commenced on February 1, 2013.

The landlord provided evidence to show that the rental unit was not properly cleaned at the end of the tenancy and that there was damage to the unit caused by the tenant. The yard and exterior of the rental property was not in good condition; rubbish was left lying around and the lawn was damaged. There was a fire pit in the yard with wood and items to be burned left behind. The landlord succeeded in re-renting the unit commencing on January 15, 2014. The landlord has claimed for the balance of December's rent after deduction of the security deposit and a half month of rent as lost revenue for the period from January 1st to January 15th. The landlord has claimed amounts for cleaning, repairs, replacement items and painting. With respect to some items, in particular damaged linoleum and laminate and stained carpeted floor surfaces, the landlord has claimed amount for depreciation rather than replacement costs. The cleaning, repair and depreciation amounts claimed are as follows:

• wall repairs & repainting where damaged	\$375.00
• green paint material (est – used already purchased paint	\$40.00
• white paint material (est – used already purchased paint	\$20.00
• missed cleaning inside	\$178.50
• garbage removal & yard work outside	\$120.00
• carpet cleaning	\$95.00
• 3 bulbs burnt out	\$3.00
• 2 floor heat register vents	\$17.45
• Bathroom sink stopper replaced	\$11.04
• Remove mesh screen attached at back door	\$6.00
• Repair 1 bifold closet door 2 nd bedroom	\$16.83
• Reinstall all closet bifold doors – repair/paint door 3 rd bedroom	\$90.00
• Depreciation: kitchen floor linoleum (1 lg area)	\$40.00
• Depreciation: living room laminate (2 sm areas)	\$40.00
• Depreciation: hallway carpet stained (2 sm areas)	\$40.00
• Depreciation: master bdrm carpet stained (2 sm areas)	\$40.00
• Depreciation: 2 nd bdrm carpet stained (1 sm areas)	\$20.00
• Depreciation: 3 rd bdrms carpet stained (8 sm spots=3 lg areas)	\$120.00

The total claimed by the landlord after deduction of the tenant's security deposit was the sum of \$2,329.82

Analysis

Based on the uncontradicted evidence from the landlord I allow the claims for cleaning and repairs in the amounts claimed, but I do not allow the full amount claimed for rent and lost revenue, based on the landlord's documents submitted in support of this application and based on the acknowledgement by the landlord's representative at the hearing that the \$38.00 rent increase imposed from June 1, 2013 onwards should not have been collected, having regard to the fact that the rent of \$1,000.00 was set by the fixed term tenancy agreement that commenced on February 1, 2013.

Section 43(5) of the *Residential Tenancy Act* provides that:

If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

I find that this provision is broad enough to permit me to deduct the overpayment from the amount awarded to the landlord on this application. For the 6 month period from June 1, 2013 to November 30, 2013 the tenant overpaid rent in the total amount of \$228.00. The landlord claimed the \$38.00 increase for December and half the amount for January. These amounts total \$285.00 and I deduct this sum from the amount claimed by the landlord, for a net monetary award to the landlord of \$2,044.82.

Conclusion

I have awarded the landlord the sum of \$2,044.82. The tenant's security deposit has been taken into account as a credit against December's rent. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,094.82 and I grant the landlord an order under section 67 in the said amount. This order may be registered 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: April 10, 2014

Residential Tenancy Branch

