



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The tenancy began on October 1, 2012 and ended on January 31, 2014. The tenants were obligated to pay \$800.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$400.00 security deposit. Neither a move in or move out condition inspection report was conducted in accordance with the Act.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party

making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of “liar and fraud” to each other. The parties were more intent on arguing with each other than answering questions or presenting their evidence.

The landlord is the sole applicant in this matter. I will address the landlords’ claims and my findings as follows.

First Claim – The landlord is seeking \$477.50 of unpaid rent for the month of January. The tenant agreed with this claim. Based on the tenants’ acknowledgement and agreement the landlord is entitled to \$477.50.

Second Claim – The landlord is seeking \$150.00 for the move in fee at the commencement of the tenancy. The landlord stated that after recently calling the Branch she was informed she was entitled to charge that fee. The tenant disputes this claim. The tenant stated that at no time was there a discussion or agreement about move in fees. In the landlords own testimony she confirmed no arrangements were ever discussed in this regard. In addition the landlord did not present any signed agreement about move in fees. Based on the insufficient evidence before me I dismiss this portion of the landlords’ application.

Third Claim – The landlord is seeking \$566.00 for having to fly back from England to attend the move out “walk thru” and the non payment of the rent. The tenant disputes this claim. The tenant stated that she should not be penalized just because the landlord chooses to live in England. The tenant stated many issues arose due to the landlords’ overseas residence. The landlord has not satisfied me that she is entitled to the

recovery of this cost. The landlord is at liberty to live where she chooses however she must bear the costs of travel when required to deal with tenancy issues. The landlord is free to assign an agent to address such issues if she so chooses. Based on the insufficient evidence before me and on the balance of probabilities I dismiss this portion of the landlords' application.

Fourth Claim – The landlord is seeking \$343.05 for cutting new mailbox keys, filling nail holes in the wall, cleaning supplies, putty and carpet cleaning. The tenant disputes this claim. The tenant stated that the keys were all left with the strata. The tenant stated that many of the nail holes were already there and that she only made a few more. The tenant stated that she did not have the carpets cleaned as “they were clean enough, didn't need it”.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In relation to the condition of the rental unit, I find that in the absence of a documented move in Condition Inspection Report or other documentary evidence to confirm the condition at the start of the tenancy the landlord can provide no evidence to support that the tenants caused any damage to the rental unit at all.

However, Residential Tenancy Policy Guideline #1 states that tenants are responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Based on the tenants own testimony I find that the landlord is entitled to the recovery of the carpet cleaning of \$227.80. In addition, the tenant was to make all attempts to return the keys to the landlord of the unit. The parties had arranged to meet on January 31, 2014. The tenant chose to give the keys to the strata instead of the landlord. The tenant bears the responsibility of ensuring the return of those keys. Based on the testimony provided, the

locksmith receipt and on the balance of probabilities I find that the landlord is entitled to the \$99.75 to have a locksmith replace the mailbox lock and keys.

Conclusion

In summary, the landlord has been successful in the following claims:

January unpaid rent	\$477.50
Carpet Cleaning	\$ 227.80
Locksmith	\$99.75
Filing Fee	\$50.00
	\$
	\$
Total:	\$855.05

The landlord has established a claim for \$855.05. I order that the landlord retain the \$400.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$455.05. 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: April 29, 2014

Residential Tenancy Branch

