



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MND, MNSD, 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. An Order of Possession – Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for damages to the unit – Section 67;
4. A Monetary Order for compensation – Section 67;
5. An Order to retain the security deposit – Section 38; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath. At the onset of the Hearing the Landlord withdrew its claim for an order of possession as the Tenant has moved out of the unit.

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 June 1, 2013 with rent of \$1,200.00 payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a

security deposit. On or about January 13, 2014 the Tenants gave notice to end the tenancy and moved out of the unit by January 31, 2014.

The Landlord states that a move-in inspection report and a copy was provided to the Tenants. The Landlord states that the Tenants failed to attend the move-out inspection and no report was completed by the Landlord. The Tenants state that no move-in condition inspection was done and no report provided to the Tenants. It is noted that no copy of the move-in report was provided as evidence by the Landlord.

The Landlord claims unpaid rent for February 2014 and state that the unit was advertised for the same rent as soon as the notice to end was received. The Tenants confirmed that they noted this ad on or about January 20, 2014. The Landlord states that the unit was rented for March 1, 2014 The Landlord states that they were unable to obtain new tenants for February 1, 2014 despite the advertisement for immediate occupancy. The Tenants state that they left the unit as mold had appeared in November 2013 and that as the Landlord had failed to act quickly to finish repairs promised since the onset of the tenancy the Tenants had no faith that the Landlord would act to remove the mold. The Tenants state and that they did not inform the Landlord of the problem as they had no faith, given the slow actions of the Landlord to make promised repairs from the onset of the tenancy, that the Landlord would make the repairs to remedy the mold. The Tenants state that they had to move immediately for the health of their three children.

The Landlord states that the Tenants left the upper walls damaged by nails and stickers that pulled off the paint, left he driveway damaged by making car repairs on the driveway, dug up a portion of the yard and left a small amount of garbage. The Landlord states that the Tenants also painted half a wall in the lower room that was not part of the tenancy agreement. The Landlord states that he painted the walls, removed the garbage and repaired the yard himself and claims a global amount of \$600.00. The Landlord withdraws the claim for utilities as there were no costs to the Landlord. The Landlord states that the Tenants otherwise left the unit clean and undamaged.

The Tenants state that the upper walls were left only with nail holes from pictures and a TV stand, there was no garbage left at the unit other than the Landlord's own garbage that the driveway was damaged prior to the start of the tenancy and that the yard was only slightly dented in one area.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. 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. As the Act requires a month's notice to end the tenancy and accepting that the Landlord acted to mitigate the losses by advertising the unit immediately if not shortly after receiving the Tenant's short notice, I find that the Landlord has substantiated unpaid rent of **\$1,200.00**. I note that although the Tenants were emphatic that they left because of the mold, given their evidence that the mold appeared in November 2013 and the Landlord was not informed of this problem, I do not find this evidence of reason for short notice to be credible.

Given the lack of a move-in inspection report and considering the Tenant's evidence of pre-existing damage to the driveway, I find that the Landlord has not substantiated any damage to the driveway caused by the Tenants and dismiss the claim for these costs claimed. Given the Landlord's evidence that the Tenants left very little garbage and considering the Tenant's evidence of the Landlord's garbage being present, I find that the Landlord has not substantiated a loss in relation to the removal of garbage, Given the Tenant's evidence that nail holes were left on a wall from mounting a TV and a small dent was left in the yard, I find that the Landlord has substantiated that the Tenants left the unit walls damaged and the yard damaged however given the lack of an itemized

account of the amounts being claimed for each of the damages being claimed, I find that the Landlord is only entitled to a nominal global amount of **\$100.00**. As the Landlord has been primarily successful with its claim I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,350.00**. Deducting the security deposit of **\$600.00** plus zero interest leaves **\$750.00** owed by the Tenants to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$750.00**. 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: May 01, 2014

Residential Tenancy Branch

