



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, OPB, MNDC, FF

Introduction

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

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the landlord entitled to an order of possession?

Background, Evidence and Analysis

The tenancy began on December 27, 2013 and ended on April 12, 2014. The tenancy was to be for a fixed term of one year. The tenants were obligated to pay \$975.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$487.50 security deposit.

The landlords are the sole applicant in this matter and bear the responsibility of proving their claim.

Both parties confirmed that the tenant has vacated the unit and an order of possession is no longer required, accordingly I dismiss that portion of the landlords' application.

I address the landlord's claims and my findings around each as follows.

First Claim – The landlord is seeking \$975.00 for unpaid rent in the month of April, \$975.00 for loss of revenue for the month of May and the loss of \$875.00 income over the final 7 months of the term of the "lease". The landlords stated that the tenant had "breached the lease" by taking on two kittens. The landlords stated that they had told the tenant via text message that pets were not allowed. The landlords stated that the

tenant moved out abruptly and without proper notice and seek the unpaid rent for April and the loss of revenue for May. The landlord stated that they have re-rented the unit for June 1 at a reduced cost of \$850.00 per month. The landlord seeks the difference in loss of revenue \$125.00 X 7 months.

The tenant stated that the "lease didn't have any pet clauses in it". The tenant stated that he was never given a warning letter to remove the cats. The tenant stated that he agreed with the unpaid rent and loss of revenue but doesn't agree that the landlord should be entitled to the monthly loss of \$125.00 "because they broke the lease when they wanted to kick me out".

A landlord has a duty to mitigate their loss. The landlord stated that they posted an advertisement on the internet once in the month of April. The landlords made virtually no effort to mitigate their loss by their actions and I therefore dismiss the request for the monthly difference over the remaining seven months.

I am satisfied based on the tenants' acknowledgement that the landlord is entitled to the unpaid rent and the loss of revenue for May in the amount of \$1950.00.

Second Claim – The landlords are seeking \$1007.90 for the replacement of a couch, \$31.35 for a new toilet lid, and \$225.00 for cleaning the suite and carpets. The landlords stated that the tenant damaged the leather couch and the replacement cost of the couch would be as indicated above. The landlords have not replaced the couch at this time. The landlords stated the couch is approximately 8 years old. The landlords stated that the tenant was to vacate the unit by 1:00 p.m. on April 12, 2014. The landlords stated that the tenant was obligated to clean the carpet but had not done so by 1:00 p.m. The landlord stated that the notice to vacate was very clear as well as the term of the "lease" that stated tenants were to clean the carpets at move out. The tenant disputed this entire claim.

The landlords had many deficiencies in this portion of their claim. The landlords repeatedly referred to the notice to end tenancy, the "lease agreement", and the condition inspection report, none of which were submitted for this hearing. The landlords stated that they had been on vacation when the tenants moved in and did not complete a condition inspection report until March 15, 2014: nearly three months after move in.

Section 23 and Section 35 of the Act clearly outline **that a landlord must conduct a condition inspection report at move in and move out**. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the

changes from the start of tenancy to the end of tenancy, if any. In addition there was not any evidence before me that the tenant was to vacate at 1:00 p.m. on April 12, 2014. In the landlords own testimony she stated that “the tenant offered to run and get a rug doctor” but denied him the opportunity. The landlord ended up doing the exact same thing on May 19, 2014. It’s clear by the landlords’ inaction to clean the carpet that there was no urgency to have it done by that particular time on that particular day. The landlord cannot deny the opportunity for the tenant to mitigate his costs without justification. The landlord has not provided sufficient evidence to support this portion of their claim and I therefore dismiss the landlords’ entire second claim of this application.

As the landlords have only been partially successful, I find that they are entitled to the recovery of only half their filing fee in the amount of \$50.00.

Conclusion

The landlord has established a claim for \$2000.00. I order that the landlord retain the \$487.50 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1512.50. 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 28, 2014

Residential Tenancy Branch

