



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. The other was the tenants' application for a monetary order including return of the security deposit. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same on both applications, one decision will be rendered for both.

During the hearing the landlord referred to 19 pages of evidence they said had been filed on April 25. The tenant acknowledged receipt of that evidence package from the landlord. The evidence referred to by the landlord was not on the file and there was no record of it having been filed. However, as the tenant had received the evidence I concluded that there had been an administrative error by staff of the Residential Tenancy Branch and I asked the landlord to re-submit that evidence. They did so shortly after the hearing was concluded. I have considered that evidence in the preparation of this decision.

Issue(s) to be Decided

- Is either party entitled to a monetary order and, if so, in what amount?
- What order should be made with respect the security deposit?

Background and Evidence

The tenants moved into this unit on August 14, 2013 pursuant to a short-term tenancy agreement that expired November 30. During this period the tenants received a rent incentive equal to \$35.00 per month. The tenants paid a security deposit of \$325.00. A move-in inspection was conducted and a move-in condition inspection report completed.

On December 1, 2013 the parties signed a new fixed term tenancy agreement. The term of this agreement ended August 31, 2014. The monthly rent of \$650.00 was due on the first day of the month. When the tenants signed the new agreement they received a rent incentive equal to \$51.00 per month which was applied to each month's rent. The agreement was that if the tenants did not stay in the unit until the end of the fixed term they would have to repay the incentive in full.

The tenants experienced some problems with the unit. The temperature control for the rental unit is located in the neighbouring unit. When the neighbouring unit was occupied the tenants were able to obtain their neighbour's cooperation in setting a temperature that was comfortable for both unit. However, when the neighbour moved out in December the tenants found that their unit was cold.

The tenants complained about the heat on December 11, 2013. The landlord sent a repairman over who replaced a heating valve. The tenant acknowledges the attendance of the repairman but says his efforts did not seem to have any effect.

Also on December 11 the tenants complained about the shower which alternated – of its' own accord – between freezing cold water and scalding hot water. The landlord issued a work order for the repair. The note on the work order says "Cartridge damaged, turned water off in the building and changed."

The day after the repair was made the tenant wrote the landlord saying that "The technician came here to fix the shower but it continues to flush extremely hot water."
There was no response from the landlord.

The tenants showered at the gym because their own shower was unusable. They continued to find the unit very cold.

In January the tenants wrote the landlord about their concerns and the possibility of transferring to another building. After not receiving any reply on January 18 the tenants sent the landlord an e-mail saying they had found another place for the beginning of February.

The landlord responded by advising they would have to give notice for the end of February.

On February 1 the tenants sent the landlord an e-mail giving notice for the end of February. The landlord responded that they needed the notice in writing. The tenants prepared a letter which was e-mailed and mailed by regular post to the landlord on February 1.

On February 4 there was a flurry of e-mails regarding the repairs required in the unit. A different employee of the landlord advised the tenants they could fix the shower and concluded the e-mail with "I do apologize for an miscommunication of this." The tenant responded with "There wasn't miss communication, as Rick attended my inquire at the first time. The technician already came before and said that the problem couldn't be fixed and that is not the only problem we have as you know."

On February 14 the landlord had the taps and the tub surround replaced. The shower worked fine after that. The landlord also provided the tenants with a portable heater.

The tenants moved out on February 28. A move-out inspection was conducted and a move-out condition inspection report completed. It is acknowledged that the tenants left the unit in very good condition.

The tenants provided their forwarding address to the landlord on February 28. The landlord filed this application for dispute resolution on March 13, 2014.

The landlord re-rented the unit on April 23 for the same rent.

Analysis

A fixed term tenancy may only be ended before the expiry of the term only on the mutual agreement of the parties, an order by an arbitrator, or the existence of the circumstances set out in section 45(3) of the *Residential Tenancy Act*. None of those circumstances exist in this situation. Accordingly, the tenants are responsible for the rent until the end of the term or the unit is re-rented, which first occurs. The landlord has only claimed for the March rent and I find the tenants are responsible for the March rent in the amount of \$650.00.

The tenants are responsible for the rent incentive received during the term of this tenancy agreement only – December 1, 2013 to February 28, 2014 – a total of \$153.00 (\$51.00/ month X 3 months). They are not responsible for the rent incentive received prior to December 1 because that was paid pursuant to a different tenancy agreement, which they completed.

The law regarding claims for liquidated damages is set out in *Residential Tenancy Policy Guideline 4. Liquidated Damages*. Although the tenancy agreement specified the liquidated damages at \$325.00 the landlord is only claiming a portion of that amount, \$250.00. Based upon the tests set out in the *Guideline* I find that this was a genuine liquidated damages clause and I award the landlord \$250.00.

As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*, where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation is in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

The tenants lived for almost three months without a usable shower. They advised the landlord of the initial problem and later they advised the landlord that the first repair was not effective. For whatever reason, the landlord did not do anything else about this situation for another two months. This unit only had one bathroom so an unusable shower is more significant than it would be in a home with two or more full bathrooms.

I award the tenants compensation for the lack of a usable shower in the amount of \$75.00 for three months – a total of \$225.00.

As the landlord was generally successful on its application I find that it is entitled to reimbursement from the tenants of the \$50.00 they paid to file it. The tenants were not required to pay a filing fee so a similar order will not be made for them.

Conclusion

I find that the landlord has established a total monetary claim of \$1103.00 comprised rent for March in the amount of \$650.00; reimbursement of the rent incentive paid by the landlord in the amount of \$153.00; liquidated damages in the amount of \$250.00; and the \$50.00 fee paid by the landlord for this application. I find that the tenants have established a monetary claim of \$225.00 a compensation for the lack of a usable shower for three months. Setting one amount off against the other, I find that landlord is entitled to an award in the amount of \$878.00. I order that the landlord retain the security deposit of \$325.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$553.00. 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: June 17, 2014

Residential Tenancy Branch

