



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for compensation for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on July 1, 2013 as a 9 month fixed term tenancy for a monthly rent of \$950.00 due on the 1st of each month with a security deposit of \$500.00 paid. The landlord submits the tenant vacated the rental unit on February 28, 2014.

The parties also agreed that the tenant paid the landlord an additional \$100.00 as a cleaning deposit; the landlord referred to this as a non-refundable cleaning deposit.

The landlord submits she began advertising the availability of the rental on January 28, 2014. She states that she secured a new tenant who took possession of the rental unit on March 9, 2014. The landlord seeks \$245.00 for 8 days of lost revenue.

The tenant submits that she moved out of the rental property because when she had been away over the Christmas season the landlord had gone into her rental unit without any notice to move the things that the tenant had placed in the storage area back into the rental unit.

The landlord also submitted that the tenant caused damage to the kitchen counter; the kitchen floor and a wall when moving items around in the unit. The landlord seeks \$845.25 for the counter replacement (invoice provided); \$853.06 for the flooring replacement (estimate provided); \$140.00 for painting that includes \$40.00 for paint (no purchase receipt provided) and 2.5 hours at \$40.00 per hour for the landlord to paint the unit.

The landlord provided no evidence to establish the condition of the rental unit at the start of the tenancy or at the end of the tenancy but testified that the rental unit had just been renovated prior to the start of the tenancy.

The landlord submits that the tenant caused damage to the countertop. The tenant acknowledged the damage in the hearing and although she provided the landlord with a website that promoted a repair process that would not require the countertop to be replaced, neither party submitted any information about this process or product as evidence.

The landlord's invoice for the replacement included a written statement from the installer that the countertop was beyond repair and required replacement.

The landlord submits the tenant caused the new vinyl flooring to be damaged during the tenancy. She testified the tenant informed her that it occurred when she pulled out the fridge to clean underneath. The tenant submits that she caused no damage to the vinyl flooring.

The landlord submits that at one point during the tenancy the tenant moved the landlord's belongings that were in the common storage area so that the tenant could move in additional items to be stored. The landlord testified that while doing this, the tenant caused damage to the walls in the storage area and she need to repair and paint the wall in the storage area.

The tenant acknowledges using additional storage space but disputes causing any damage to the walls in the area.

The landlord also seeks advertising costs in the amount of \$12.60 for advertising the rental unit. The landlord has provided a copy of the ad and her receipt. The landlord submits that she normally rents by word of mouth but because she had to find a tenant quickly she had to advertise online.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Despite the tenant's testimony that she vacated the rental unit because of the landlord's entry without notice, she has not provided any evidence that she provided the landlord with a written notice of a breach of a material term of the tenancy and that if it was not corrected within a reasonable time she would end the tenancy.

As such, I find the tenant has failed to establish that she had grounds under Section 45(3) to end the tenancy prior to the end of the fixed term or March 31, 2014. As such, I find the tenant is responsible for the payment of rent for the month of March 2014 subject only to the landlord's obligation to mitigate her losses.

I find the landlord took reasonable steps to mitigate her losses and as a result was able to rent the unit to a new tenant effective March 9, 2014. Therefore, I find the tenant is responsible for the loss of 8 days revenue or \$245.00 as claimed by the landlord. I also find that the landlord suffered an additional loss of \$12.60 for advertising costs due to the tenant vacating the rental unit prior to the end of the fixed term.

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.

Much of the evidence presented to me consisted of disputed testimony and different versions of the condition of the rental unit. Where one party provides a version of the condition in one way, and the other party provides an equally probable version of the condition, without further evidence, the party with the burden of proof has not met the onus to prove their version of the condition. In the case before the party with the burden of proof is the landlord.

As the landlord has provided no documentary evidence of any damage caused to the rental unit and the tenant disputes the landlord's claim that there was damage to the

vinyl floor and to the walls in the storage area, I find the landlord has failed to establish the tenant is responsible for any of this damage. I dismiss this portion of the landlord's claim.

In regard to the landlord's claim for replacement of the countertop, I find the tenant did not dispute that she had caused the damage to the countertop and as such is responsible for its repair or replacement.

As to the tenant's claim that the landlord could have repaired the countertop at a much lower cost than replacement I find that the tenant has provided no evidence to support either the process or that the countertop was damaged in manner that allowed this type of repair.

However, the landlord did provide a statement from his installer that indicated that the countertop damage made the type of repair recommended by the tenant to not be acceptable. As such, I find the landlord has established that replacement of the countertop was required and is entitled to recover the costs of replacement from the tenant.

Despite indicating in the hearing that I would not consider the issue of the additional cleaning deposit charged by the landlord upon further deliberation I have determined that it is germane to the landlord's Application as she has applied to retain the security deposit.

A security deposit is defined under Section 1 of the *Act* as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property. Section 20(b) stipulates that a landlord must not require or accept more than one security deposit in respect of a tenancy agreement.

From the testimony of the parties, the landlord charged the tenant \$100.00 as a cleaning deposit. However, I find the landlord collected a deposit as security to ensure the tenant met her obligation to clean the rental unit. Therefore I find the total security deposit collected by the landlord was \$600.00.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,127.85** comprised of \$245.00 lost revenue; \$12.60 advertising costs; \$845.25 countertop replacement and \$25.00 of the \$50.00 fee paid by the landlord for this application as she was only partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$527.85**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 17, 2014

Residential Tenancy Branch

