



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NKS Enterprises
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This is an application filed by the landlord for a monetary order for damage to the unit, site or property, for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

The landlord attended the hearing by conference call and gave undisputed testimony. The tenant did not attend or submit any documentary evidence. The landlord states that the tenant was served via Canada Post Registered Mail on April 11, 2014 and has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation. The tenant submitted on July 23, 2014 a written request for an adjournment due to two reasons. The first is that the tenant has a language barrier and is unable to communicate in English and would require an interpreter. The second reason is that the tenant has a "settlement worker" who is assisting the tenant regarding this dispute, but is away on vacation until September 26, 2014. The landlord disputes the tenants request stating that she has always communicated in English with the tenant and states that although the tenant is not fluent he is able to communicate effectively. The landlord also states that she was only just notified the day before the hearing regarding the adjournment and disputes it as the application was filed on April 6, 2014 and service was confirmed by Canada Post Registered Mail on April 11, 2014 and that the tenant had more than ample time to prepare for the hearing with the assistance of an interpreter and/or the "settlement worker" that could have been requested earlier instead of just before the hearing. I find that the tenant has failed to provide sufficient evidence to satisfy me that the hearing needs to be adjourned due to a language barrier or that he is without a "settlement worker". The tenant had approximately 4 months to arrange for an interpreter and conduct the hearing. I also find that a "settlement worker" would not be necessarily be required as the tenant, had he properly prepared would have been able to participate in the hearing process himself. In the interest of fairness to the landlord, I find that the tenant's application for an adjournment is denied. The hearing shall proceed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit?

Background and Evidence

This tenancy began on November 15, 2012 on a fixed term tenancy for 12.5 months as shown by the submitted copy of the signed tenancy agreement dated November 28, 2012. The monthly rent was \$1,280.00 payable on the 1st of each month. A security deposit of \$640.00 was paid on November 15, 2012. A condition inspection report for the move-in was completed by both parties on November 15, 2012.

The landlord states that the tenant failed to provide proper notice to end the tenancy. The landlord states that on December 6, 2013 the tenant left the rental unit keys with a neighbor and asked her to notify the landlord that he had moved out. The landlord has submitted a copy of a statement by the neighbor confirming this as well as noting the dirty condition of the rental and that furniture/rubbish was left. The landlord states that upon being notified the landlord inspected the property in the absence of the tenant and found damage of holes in the drywall of the suite that required repair and painting. The landlord also states that the tenant left the unit very dirty requiring cleaning and that the tenant left junk and furniture in the rental requiring cleaning and disposal of the rubbish. The landlord has provided copies of receipts for work for the drywall/painting of \$1,895.00, cleaning of \$250.00 and \$275.00 junk/rubbish removal.

The landlord also seeks compensation for the loss of December 2013 rent of \$1,280.00 and January 2014 of \$1,280.00 for a total of \$2,560.00. The landlord stated that the tenant failed to provide proper notice to end the tenancy in December 2013 and that cleaning and repairs took approximately 1 week that the rental unit was not rentable in December 2013. The landlord states that because the tenant failed to provide proper notice of vacating the rental unit in December 2013 that the landlord is entitled to recovery of January 2014, \$1,280.00 in lost rental income. The landlord states that because of the slow period for rentals in January 2014 the landlord was unable to re-rent the unit and mitigate rental losses. The landlord seeks a total monetary claim of \$4,980.00.

The landlord states that on March 28, 2014 the tenant contacted the landlord requesting the return of the security deposit and provided his forwarding address in writing.

Analysis

I accept the undisputed evidence of the landlord and find that a claim has been established for damages for \$1,895.00 for drywall/painting repairs, \$250.00 for cleaning costs and \$275.00 for rubbish/furniture removal based upon the neighbors statement and the landlord's receipt of work performed.

I also find based upon the undisputed evidence of the landlord that a loss of rent incurred has been established for December 2013 of \$1,280.00. The tenant failed to provide proper notice and the rental unit required cleaning and repairs to make it rentable. The landlord noted in her direct testimony that repair work only lasted approximately 1 week in December. The landlord has established a monetary claim of \$1,280.00 for loss of rental income for December 2013.

As for the landlord's request for compensation for loss of rental income for January 2014 of \$1,280.00, I find that the landlord has failed to provide sufficient evidence to satisfy me that this claim is as a result of neglect/liability of the tenant. The landlord stated that she tried to re-rent the unit, but that as this was a slow period it was not rentable. The tenant had no responsibility other than to provide proper notice as per the Act and this had it been accomplished would have been for December 2013. This portion of the landlord's claim is dismissed.

The landlord has established a total monetary claim of \$3,700.00. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$640.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 of the Act for the balance due of \$3,110.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$3,110.00.
The landlord may retain the security deposit.

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 29, 2014

Residential Tenancy Branch

