



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Norcan Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The landlord seeks a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The tenant also seeks a monetary order for money owed or compensation for loss of quiet enjoyment and the return of the security deposit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence by the other party, I am satisfied that both parties have been properly served.

At the end of the hearing, the tenant's advocate with the consent of the tenant requested that the decision be delivered to her office.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?
Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on September 1, 2013 on a fixed term tenancy ending on August 31, 2014 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$800.00 payable on the 1st of each month and a security deposit of \$400.00 was paid on August 2, 2013. The landlord has submitted a copy of the completed condition inspection report for the move-in on August 14, 2013 and the move-out on March 31, 2014.

The landlord seeks a monetary claim of \$1,080.00 which consists of \$280.00 in damage and \$800.00 for loss of rental income of \$800.00 for April. The landlord states that the tenant installed a drapery panel in the middle of the living room by attaching screws and

hangers through the popcorn ceiling without permission from the landlord. The landlord has submitted photographs of how the ceiling looked at the end of the tenancy. The landlord states that the tenant failed to do an adequate job repairing the ceiling in an acceptable manner that required the landlord to repair the damage for a cost of \$280.00. The landlord also states that the tenant breached the fixed term tenancy by ending it prematurely on March 31, 2014 instead of August 31, 2014. The landlord states that efforts were made to re-rent the unit, but that attempts were unsuccessful. The tenant disputes this portion of the landlord's claim stating that he had found a person to takeover his tenancy. The tenant states that this friend was already a tenant in another unit of the same rental property and would be an appropriate assignee as his fixed term tenancy was ending in February 2014. The landlord disputes this stating that this person was not acceptable and confirmed that this person was already a tenant in another unit. The landlord confirmed in his direct testimony that the other tenant who was found to be unacceptable had a tenancy ending on February 28, 2014 and was still currently a tenant. The landlord confirmed in his direct testimony that EJD Building Maintenance was his company and that he performed the necessary repairs himself.

The tenant seeks a monetary claim of \$1,000.00 which consists of \$400.00 for the return of the security deposit and \$600.00 in compensation for the loss of quiet enjoyment for 6 months at \$100.00 per month. The tenant states that the landlord failed to repair a leak in the ceiling as well as a leak in the kitchen sink and bathroom faucet. The landlord disputes this stating that in November of 2013 the landlord responded to a complaint of a leaking ceiling and fixed the leak. The landlord states that no other complaints regarding a leaking ceiling were reported after. The tenant relies on a photograph of a drain pipe under the sink with a paper towel wrapped around it as confirmation that there were issues with the sink. The tenant has also submitted a photograph of a ceiling fan vent that appears to show a patched section next to the vent cover. The tenant has submitted a copy of a signed letter dated November 18, 2013 sent to the landlord which states that he is having issues under the sink in the kitchen and when it rains a leak from the bathroom fan.

Analysis

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord has provided photographs of the ceiling and an invoice for repair work. The tenant has confirmed that he installed hooks and hung a drapery panel from the ceiling without the permission of the landlord. I accept the landlord's claim that it cost him \$280.00 to adequately repair the popcorn ceiling.

On the landlord's claim for \$800.00 for loss of rental income for April, I find that the landlord has failed in this portion of the claim. Both parties confirmed that the tenant had offered an alternate tenant to takeover the fixed term tenancy. The landlord did not accept this current tenant to takeover the fixed term tenancy, but has not provided a

reason as to why he would not be acceptable. This tenant is a current tenant who's fixed term tenancy ended on February 28, 2014 and could have assumed the tenant's fixed term tenancy. The landlord has failed to properly mitigate any possible losses by having the alternate tenant take over the tenancy. This portion of the landlord's claim is dismissed.

I prefer the evidence of the landlord over that of the tenant and I find based upon the evidence of both parties that the tenant has failed to establish a claim for loss of quiet enjoyment for a monetary claim of \$600.00 for \$100.00 over a 6 month duration. I find that the tenant has failed to provide sufficient evidence to satisfy me that after being notified the landlord failed to act in dealing with a ceiling leak. The tenant has also failed to provide sufficient evidence to satisfy me that he suffered any real loss of enjoyment over a slow leak under the kitchen sink and from the bathroom faucet. This portion of the tenant's claim is dismissed.

The landlord has established a monetary claim of \$280.00. The landlord is entitled to recovery of the \$50.00 filing fee. I order that the landlord retain \$330.00 from the \$400.00 security deposit in satisfaction of the claim and I grant the tenant a monetary order for the return of the balance of \$70.00.

The tenant is granted a monetary order for \$70.00. 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 may retain \$330.00 from the security deposit.
The tenant is granted a monetary order for \$70.00.

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: August 08, 2014

Residential Tenancy Branch

