



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, SS, FF

Introduction

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

The hearing was conducted via teleconference and was attended by both landlords and the tenant. The hearing was originally convened on August 19, 2014 and adjourned to September 12, 2014.

At the first hearing I noted that the landlord's documentary evidence was not readable as the copies were too faint. The tenant also acknowledged that she had not received the landlord's evidence and that her evidence to the landlord only included photocopies of the photographs she submitted to the Residential Tenancy Branch.

As a result, I adjourned the hearing and ordered both parties to re-serve all of their evidence to each other and to the Residential Tenancy Branch. Both parties confirmed re-service at the reconvened hearing.

At the outset of the original hearing the parties confirmed the tenant had vacated the rental unit and there was no longer a need for an order of possession. I amended the landlords' Application to exclude the matter of possession.

I also note that the landlords had on July 18, 2014 obtained a substituted service order and as such, I amend this Application to exclude the matter of substituted service.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for lost revenue; for damage to and cleaning of 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 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on June 14, 2013 for a 6 month fixed term tenancy beginning on July 1, 2013 that converted to a month to month tenancy on January 1, 2014 for the monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$375.00 and a pet damage deposit of \$300.00 paid. The tenancy agreement contained a clause that requires the tenant to pay an additional 5% of the rent for any late payment of the rent. The tenancy ended when the tenant vacated the rental unit on or before June 24, 2014.

The parties agree that they had agreed upon a reduced rent for the month of June in the amount of \$629.00. The parties acknowledge that the landlords have not received payment for rent. I note that the tenant had provided the landlords with a e-transfer that was not accepted.

The landlords have submitted into evidence a copy of an email from the tenant dated June 1, 2014 giving the landlords notice of her intention to end the tenancy effective July 1, 2014. The landlords also provided copies of their response to this email advising the tenant she would be responsible for the payment of rent for the month of August 2014 as her notice to end the tenancy was late.

The landlords also testified that on June 10, 2014 a 10 Day Notice to End Tenancy for Unpaid Rent was issued to the tenant with an effective date of June 20, 2014. A copy of this Notice was not submitted into evidence.

The landlords claim unpaid rent for the month of June in the amount of \$629.00 plus the late fee in the amount of \$37.50 and NSF fees charged by the landlord's bank in the amount of \$7.00 (receipt provided); and lost revenue for the month of July 2014 in the amount of \$750.00.

The landlords have provided no evidence of any attempts to re-rent the rental unit to a new tenant.

The landlords submit that at the end of the tenancy the tenant had caused damage to the carpets in the bedroom; blinds; walls; removed a shower head; and left the unit uncleaned.

The landlords submit that they had the carpets had been damaged by the tenant's cat and they have replaced them with hardwood but seek only compensation based on the estimate for carpet replacement at \$909.88. The landlords submit the carpet was installed a year prior to the start of this tenancy or June of 2012. Photographs of the carpet condition were submitted into evidence.

The landlords seek compensation for paint brushes to repair walls however the landlords have provided no evidence of damage to the walls, either in their condition inspection report or in their photographic evidence.

The landlords have provided a photograph of the damaged blinds and a receipt in the amount of \$113.02 for the blinds that required replacement. The tenant submits this damage was caused when the renovators were completing work during the tenancy.

The landlords have submitted a photograph of the shower spout missing a shower head and a receipt for a replacement showerhead in the amount of \$70.55. The tenant submits that there was no showerhead at the start of the tenancy. The Condition Inspection Report records only that the bathroom was "cleaning and working" – no other notations had been made.

The landlords also submit a claim for gas (\$80.00) for garbage removal and landfill fees (\$34.00). The landlords have submitted photographs of the rental unit and grounds, as well as receipts for landfill charges. No receipts for gas were provided. The tenant submits that most of the garbage left behind was from the renovations that had been worked on in May 2014 and not hers.

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.

Based on the evidence of both parties, I find the tenant owes the landlords rent for the month of \$629.00 and that as result of the tenant's actions the landlords were required to pay an NSF charge of \$7.00 to their bank and the tenant must pay the late payment fee according to the tenancy agreement.

However, I note that Residential Tenancy Regulation Section 7(1) limits the amount of a late payment to \$25.00. As such, I find the landlords are entitled to \$25.00 for the late payment fee and not the \$37.50 requested.

While I accept that the tenant did provide a notice to end the tenancy to the landlord's that would require the end date of her tenancy to be July 31, 2014 and not July 1, 2014 because she provided it to the landlord the day rent is due as opposed to the day before rent was due, I also note that the landlords' testimony that they issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent. I also note the tenant moved out of the rental unit prior to the end of June 2014.

As such, that the tenancy ended as a result of the landlords' issuance of the 10 Day Notice and not as a result of the tenants notice.

As to the landlord's claim for lost revenue for the month of July 2014 I find that the landlords have provided no evidence to show that even if they had suffered such a loss that they took any steps to mitigate the loss as required under Section 7 of the *Act*.

Section 7(1) of the *Act* stipulates that if a landlord or tenant does not comply with the *Act*, regulations or tenancy agreement the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Therefore, I find the landlords are not entitled to any compensation for lost revenue for the month of July 2014.

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.

From the landlords' evidence and testimony I find the landlords have established the tenant is responsible for the damage to the carpet and the blinds. I am not persuaded by the tenant's position that the blinds were damaged by the renovation workers as there is no evidence she reported this to the landlords at the time.

I note that the replacement value of the carpet however must be discounted based on its age. Residential Tenancy Policy Guideline states the useful life of carpeting is 10 years. As per the landlords' testimony the carpet is at least 2 years and as such I reduce the landlords' claim by 20% or \$182.98 leaving the carpet replacement value at \$726.90.

In regard to the landlords' claim regarding damage to the walls, I find there is no evidence submitted by the landlords to support the claim that there was damage to any walls.

I find that despite the tenant's assertion that no shower head was included at the start of the tenancy, there is no evidence to support her position. In fact, I find the Condition Inspection Report shows the shower to be clean and working – with no notation that it required the tenant to provide a showerhead. I find the landlord has established this loss.

As to the landfill fees and gas for garbage removal while there is some garbage left behind I accept that the landlords may have been required to take two trips to the landfill for a minimal charges as provided for in their receipts and grant the landlords this portion of their claim.

However, due to the location of both the rental unit and the local landfill (where the receipts are from), I find that landlord could not have possibly used \$80.00 worth of case for two trips between the two locations. In the absence of receipts for gas I dismiss this portion of the landlords' claim.

As to the landlord's claim to recover the filing fee for their Application for Substituted Service, I find that as that Application was not before me I cannot determine whether or not the order was required and as such I dismiss this portion of their claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,655.47** based on the above findings and the \$50.00 fee paid by the landlords for this application.

I order the landlords may deduct the security deposit and pet damage deposit held in the amount of \$675.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$980.47**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlords 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: September 29, 2014

Residential Tenancy Branch

