



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, 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 by the landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue and for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on February 1, 2014 as a month to month tenancy for the monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$375.00 paid. The tenancy ended when the tenants returned possession of the unit and keys to the landlord on May 20, 2014.

The landlord seeks compensation for damage left to the rental unit for repairs made to the wall due to the tenant's mounting a television on it and for repairs to baseboards in the bathroom due to water damage caused by the tenant's plunger spilling water onto the bathroom floor and wall. The landlord has submitted an invoice for this work completed in the amount of \$315.00.

The tenants submit that they had one of their fathers come in and complete the repairs to the wall in the living room. The landlord acknowledges that an attempt was made to complete the repairs but their attempt did not make fill the holes as they allowed the plaster to dry and pull away but did not put any additional coats of plaster.

The tenants submit that they had completed a couple of coats of plaster but that the pictures submitted by the landlord look like the holes were remained after the work had been completed.

The tenants also submit that the water damage in the bathroom was not related to the plunger but rather the fact that water would leak out from the shower curtain because there was no shower guard to prevent shower water from leaking over the edge.

The landlord submitted into evidence a copy of a Condition Inspection Report recording the condition at the start and end of the tenancy. This report is signed at both the start of the tenancy and at the end by the tenants.

The landlord also seeks compensation for lost revenue for the month of June 2014 in the amount of \$750.00. The landlord submits that despite receiving a 1 Month Notice to End Tenancy for Cause the tenants did not vacate the rental unit but rather they filed an Application for Dispute Resolution seeking to cancel the Notice.

The landlord submits that at a previous hearing held on May 20, 2014 the tenants were order to return the keys as they had already moved out and that both parties were order to meet to conduct the move out inspection. The tenants submit they moved out of the rental unit on or about May 13, 2014 and did return the keys on May 20, 2014.

The landlord submits that as a result she did not know whether or not the tenancy would continue and as such she could not rent the unit out for the month of June 2014, despite starting to advertise it online on April 30, 2014. The landlord submits she was not able to rent it until July 1, 2014.

The tenants submit that they weren't in the unit in June 2014 and that they should not be responsible for any rent for that month. They submit that while the landlord advertised the unit they did not prevent her from showing it to anyone and she had advertised the unit at either \$800.00 or \$850.00.

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.

From the testimony of both parties I note that the tenants had been issued a 1 Month Notice to End Tenancy for Cause had been issued with an effective date of April 30, 2014. I also note the tenants disputed the Notice and a hearing was scheduled for May 20, 2014.

I accept that in the intervening time between the issuance of the Notice and the hearing the tenants did not inform the landlord of their intent to vacate the rental unit and not to pursue cancelling the notice at the hearing of May 20, 2014. As such, I find the landlord could not, with any reliability, know that the unit would be available for rental effective June 1, 2014 until May 20, 2014.

As a result, I find the landlord was unable to secure new tenants for the month of June as a direct result of the tenants' actions and she has suffered a financial loss. I find the landlord took reasonable steps to mitigate this loss by advertising the rental unit but by the time the tenants informed the landlord they had vacated the rental unit it was too late for the landlord to secure new tenants.

Therefore, I find the landlord is entitled to compensation for the loss of revenue for the month of June 2014 in the amount of \$750.00. I note that despite the landlord requesting more rent from new tenants she was well within her authority to do so and she was not required to pursue only tenants willing to pay a previously agreed upon amount from the tenant's tenancy.

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.

Based on the documentary and photographic evidence I prefer the landlord's position in regard to the damage to the rental property. I find the tenants acknowledged the damage to the rental unit when they signed the move out Condition Inspection Report and without additional evidence to support their position the landlord has provided sufficient evidence to counter the tenant's verbal submissions.

Further, I find the landlord has provided sufficient evidence to establish the value of the loss through the provision of the invoice in the amount of \$315.00.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,115.00** comprised of \$750.00 lost revenue; \$315.00 repairs and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$375.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$740.00**.

This order must be served on the tenants. If the tenants fail 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: October 6, 2014

Residential Tenancy Branch

