



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit or property; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail on July 18, 2014 at his forwarding address provided to the building manager over the telephone. The landlord verbally provided a registered mail tracking number and testified that the registered mail was successfully delivered. The landlord also testified that further evidence was sent to the tenant via registered mail on October 23, 2014 using the same forwarding address. The landlord verbally provided a registered mail tracking number as proof of service.

Based upon the evidence before me, I was satisfied the tenant has been sufficiently notified of this proceeding and I continued to hear from the landlord in the absence of the tenant.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

A co-tenancy commenced October 1, 2012 on a fixed term basis that expired on March 31, 2013 and then converted to a month to month tenancy. The monthly rent of \$825.00 was payable on the 1st day of every month and the landlord collected a security deposit of \$415.00. On September 13, 2014 the parties agreed in writing that the tenancy would continue with the male tenant only and the vacating female tenant would have no claim to the security deposit. I also heard that the tenant worked in Alberta and permitted other occupants to reside in the rental unit.

At the end of May 2014 the occupants informed the manager that they were vacating the rental unit. The manager immediately engaged in email correspondence with the tenant to determine whether he was ending the tenancy. The tenant responded via email on May 23, 2014 to

indicate that he was giving notice and that he would call the manager. On June 2, 2014 the manager emailed the tenant to enquire about the rent for June 2014 and informed the tenant she has not yet received notice to end tenancy from him. The tenant responded on June 26, 2014 indicating he gave notice on May 23, 2014 and that he would ask the occupants to return the keys to the landlord.

The landlord appearing at the hearing testified that possession of the rental unit was regained on July 1, 2014; however, I was provided documentary evidence indicating the landlord was in possession of the unit in June 2014. The move-out inspection report was dated June 23, 2014; the manager's labour report for cleaning is dated "June 2014", a painting invoice is dated June 23, 2014; and the carpet cleaning and repair invoices are dated June 29, 2014.

On June 24, 2014 the landlord sent the tenant a letter and copy of the move-out inspection report requesting his acknowledgment of the charges and authorization to retain the security deposit. The letter indicated that if a response is not received from the tenant by July 3, 2014 the landlord would proceed to file an Application for Dispute Resolution. The landlord filed this Application for Dispute Resolution on July 4, 2014.

The landlord seeks compensation from the tenant for the following:

| | |
|----------------------------------|--------------|
| Unpaid rent for June 2014 | \$ 825.00 |
| Late fee for June 2014 | 25.00 |
| Loss of rent for July 2014 | 825.00 |
| Suite cleaning | 156.00 |
| Carpet cleaning and burn repairs | 283.50 |
| Drape cleaning | <u>30.00</u> |
| Total | \$2,144.50 |

The landlord submitted that the status of the tenancy was not determined until mid-June 2014 and the landlord pointed to the emails to demonstrate this. The rental unit also required considerable cleaning and carpet repairs upon regaining possession. The landlord testified that the unit was re-rented the unit as of August 1, 2014. As such, the landlord seeks to recover unpaid rent for June 2014 and loss of rent for July 2014.

In support of the cleaning charges, the landlord testified that nothing was cleaned when the occupants vacated the rental unit and the suite, including the drapes, were cleaned by the manager. The landlord provided a copy of the manager's labour report in support of the suite cleaning and drape cleaning charges. The landlord pointed out that painting was also performed in the suite but that this was not claimed against the tenant.

The landlord also testified that the carpet was left stained and with cigarette burns. I was provided a copy of a carpet cleaning invoice indicating the carpets were cleaned with given an

enzyme treatment. I was also provided a copy of a carpet repair invoice indicating six burn holes were repaired.

Documentary evidence provided for my review included: two pages of the tenancy agreement; the move-in and move-out inspection reports; the manager's labour report; a painting invoice; carpet cleaning and repair invoices; and, correspondence between the parties in May and June 2014.

Analysis

Upon consideration of the undisputed evidence before me, I provide the following findings and reasons.

In order for a tenant to end a month-to-month tenancy, a tenant is required to give the landlord at least one full month of written notice to end the tenancy. The written notice must include the date, address of rental unit, the effective date of the notice and the tenant's signature. The Act also requires that all keys or means of access be returned to the landlord at the end of the tenancy.

Giving notice to end a tenancy in May 2014 minimally obligates the tenant to pay rent for June 2014 as the effective date of a notice given in May 2014 is no sooner than June 30, 2014 when rent is payable on the 1st of the month. However, in this case, I find the tenant's email of May 23, 2014 to be non-compliant with the notice to end tenancy requirements as outlined above. Although the tenant indicated he was giving notice in his email of May 23, 2014, I find the key information he omitted is the effective date of the end of tenancy. The uncertainty as to when the landlord would regain possession of the unit was further exacerbated since the keys had not been returned when the occupants vacated. Thus, I find there was uncertainty as to when the tenancy would be ending and that this was not confirmed until mid to late June 2014. Without certainty as to when the tenancy was ending, the landlord was precluded from taking steps to clean and advertise this unit for rent. Therefore, I find the tenant's actions, or failure to take sufficient action to end this tenancy, caused the landlord to further suffer loss of rent for the month of July 2014.

In light of the above, I grant the landlord's request to recover unpaid rent for June 2014 and loss of rent for July 2014.

I have made no award for a late fee for June 2014 since the two pages of the tenancy agreement provided to me do not include a late payment term. In order to claim late payment fees the landlord must demonstrate that the tenancy agreement provides for such a term.

Under the Act, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy and is responsible for damage that they, or persons they permit on the property, cause through their actions or neglect. Upon review of the cleaning charges, carpet cleaning and

repair invoices, condition inspection reports; and, upon consideration of the undisputed testimony I find the landlord has established that the tenant is responsible for compensating the landlord the amount of cleaning and repair costs claimed. Therefore, I award those amounts to the landlord.

I further award the landlord recovery of the filing fee paid for this Application for Dispute Resolution.

I authorize the landlord to retain the security deposit in partial satisfaction of the amounts awarded to the landlord.

Given all of the above, the landlord has been provided a Monetary Order calculated as follows:

| | |
|----------------------------------|-----------------|
| Unpaid rent for June 2014 | \$ 825.00 |
| Loss of rent for July 2014 | 825.00 |
| Suite cleaning | 156.00 |
| Carpet cleaning and burn repairs | 283.50 |
| Drape cleaning | 30.00 |
| Filing fee | 50.00 |
| Less: security deposit | <u>(415.00)</u> |
| Monetary Order | \$1,754.50 |

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,754.50 to serve and enforce as necessary.

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: November 07, 2014

Residential Tenancy Branch

