



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's claim for a monetary award and an order to retain the security deposit. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain the tenants' security deposit?

Background and Evidence

The rental unit is a residence in Surrey. The tenancy began in 2011. On January 8, 2014 the parties signed a renewal tenancy agreement for a one year fixed term commencing February 1, 2014. The monthly rent of \$2,550.00 was payable on the first of each month. The tenants paid a security deposit of \$1,275.00 in February, 2011.

In February, 2014 the tenants notified the landlord that they were planning to move out of the rental unit because they intended to buy their own home. The tenants moved out on May 31, 2014. The landlord re-rented the house effective June 15, 2014.

In her application for dispute resolution the landlord claimed payment of the sum of \$3,000.00. The landlord has claimed loss of revenue for June in the amount of \$1,275.00. The landlord has also claimed for the cost of repairs to the rental unit. The landlord submitted an estimate for repairs dated June 9, 2014. The estimate was in the amount of \$5,323.20 and it included extensive painting work and repairs to walls as well as other work, including repair of a railing, repair of weather strip, replacement of a bathroom countertop as well as some other repair work and recaulking. The landlord

submitted an estimate for replacement of a portion of the carpet and repair of a bedroom carpet. The quotation was in the amount of \$1,330.00. The landlord submitted a quote for rubbish removal in the amount of \$262.50. The landlord submitted an invoice for actual repairs said to have been performed in the amount of \$1,223.25.

The landlord did not perform a condition inspection of the rental unit before the tenants move into the unit in February, 2011. The landlord said that the unit was only one year old when the tenants moved in and it was in "as new condition" when the tenancy began. The landlord submitted a number of photographs that she testified showed the rental unit as it was when the tenancy began in February, 2011. The landlord also submitted photographs that she claimed showed damage to the rental unit caused by the tenants during the tenancy. The photos showed some dents to a garage door, nail polish marks on a door and a cabinet, a cracked banister railing, a stained bathroom countertop, a stained or marked ceramic stove top and a series of pictures of carpet damage. The landlord submitted pictures of marks and some mould on window sills and a window and inside a kitchen drawer. The landlord showed what she said were marks and rust stains on a washer and dryer. The landlord submitted pictures of scratches on the bottoms of several doors and some peeling laminate on the edges of some kitchen cabinetry. There were pictures of some damaged screens and pictures of materials said to have been left behind by the tenants after they moved out of the unit.

The tenants disputed all of the landlord's claims. They said they gave the landlord ample notice that intended to move and cooperated with the landlord in showing the unit to prospective tenants. The tenants disagreed with the landlord's claims for damage to the rental unit. They noted that there was no condition inspection when they moved into the rental unit. The tenant testified that the landlord's pictures did not show the condition of the rental unit when the tenancy began, but rather they were pictures of the house in brand new condition, before the tenants or the previous tenants had lived in the unit. They referred to pictures that showed operation manuals still taped to the top of the washer and dryer in one of the pictures. The tenant said that there were no pictures taken before they moved in because the former tenants were not yet out of the house when they moved in on February 1, 2011. The tenants referred to damage that was present when they moved in; they mentioned damage to the back door and weather stripping, carpets not cleaned and damage caused by the former tenants' pit bull dog, including damage to the hardwood floors. The tenants said that they were advised by the landlord that during the previous tenancy there had been a flood from the dishwasher that had ruined the wood around the dishwasher. The tenants conjectured that this may have also been the cause of some peeling laminate on the cabinetry gable ends near the floor. The tenants submitted their own photos of the

rental unit. According to the tenants the pictures showed that the house was left in excellent condition. The tenants replaced some carpet during the tenancy and re-painted most of the house. They also made improvements to the property, including improvements to the back yard; they laid paving stones, stained the fence, built flower beds and re-seeded the grass. The tenants provided several witness statements about the condition of the house before and during the tenancy. A nearby resident said in his statement that the former tenants were three men with a pit bull dog. He said that he believed they were involved in gang related criminal activities. He mentioned damage to the house that he saw, caused by the former tenants.

The tenants acknowledged that they did leave some items behind at the rental unit, but they said they were not taken because there was a hostile and inappropriate altercation between the landlord's boyfriend and the male tenant at the rental property on May 30th.

The parties did not meet to conduct a move-out inspection. The tenants had an agent conduct an inspection for them on May 31st. The landlord performed her own inspection on June 1st.

Analysis

The tenants entered into a fixed term tenancy and ended the tenancy before the end of the fixed term. Based on the evidence submitted I find that the landlord took reasonable steps to mitigate her damages by attempting to re-rent the unit as soon as possible after receiving notice that the tenants were leaving before the end of the term. She succeeded in re-renting the unit effective June 15, 2014. I find that the tenants are responsible for the landlord's loss of revenue for the two week period in the amount of \$1,275.00.

With respect to the landlord's claim for the cost of repairs, the landlord has the onus of proving her entitlement to a monetary award for the items claimed on a balance of probabilities. The landlord did not conduct a condition inspection or prepare a report when the tenants moved in. She claimed that the rental unit was in as new condition when the tenancy began in 2011, but the tenants have submitted their own evidence that contradicts the landlord's position. I find that the tenants have provided plausible evidence to show that they have not caused the significant items of damage claimed by the landlord. I find that the landlord has not met the burden of proving that the tenants are responsible for the repairs claimed by the landlord. The landlord's claim for the cost of repairs is dismissed without leave to reapply. The tenants did acknowledge that they left some items at the rental unit that the landlord had to dispose of, but they disagreed with the amount quoted for the disposal; they thought the amount was excessive. In the

absence of an invoice for the actual cost of removal of the tenant's abandoned goods and refuse, I award the landlord the sum of \$100.00 for the removal costs.

Conclusion

The amount awarded to the landlord is the sum of \$1,375.00; all other claims by the landlord are dismissed without leave to reapply. The landlord is entitled to recover the \$50.00 filing fee for her application for a total award of \$1,425.00. I order that the landlord retain the security deposit of \$1,275.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$150.00. This order may be registered in the Small Claims Court and 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: November 10, 2014

Residential Tenancy Branch

