



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNSD

Introduction

This hearing dealt with an application by the landlord seeking a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or the tenancy agreement, and the recovery of the filing fee. Both parties participated in the conference call hearing. Both parties gave affirmed evidence. This matter was originally scheduled on March 26, 2015. On that date the parties agreed to adjourn the matter so that the tenant could be provided the documentary evidence that the landlord wished to rely on. The tenant and the Branch received the evidence on May 7, 2015. The tenant stated that the evidence was submitted late and should not be included in this hearing. I will address this issue in my analysis later in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about October 1, 2013 and was to end on September 30, 2014. Rent in the amount of \$1600.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$800.00. Condition inspection reports were not conducted at move in or move out. The landlord stated that the tenant moved out two months early without proper notice or their consent in early August of 2014. The landlord stated that she was unable to rent the unit due to the dirty condition it was left in. The landlord stated that it took her a month to clean the unit and have it painted. The landlord is

seeking the loss of revenue for August and September in the amount of \$3200.00 and the cost of painting the unit for \$779.23.

The tenant gave the following testimony:

The tenant disputes both claims as made by the landlord. The tenant stated that since condition inspection reports were not conducted and that the unit hadn't been painted in over 8 years he should not be responsible for upgrading and updating the landlords' suite. The tenant stated that he left the unit clean and that the landlord verbally advised him that it would be no problem to rent the unit. The tenant stated that he felt the landlord was allowing him out of the lease and shouldn't be responsible for the loss of two months' rent.

Analysis

As outlined at the beginning of this decision, the tenant felt the documentary evidence of the landlord should not be included in this hearing. The documentary evidence is a signed tenancy agreement, some photos of the unit after the tenant moved out, the receipt for the painting and some e-mails. I find that the evidence is to be accepted and that it does not cause any prejudice to the tenant in regards to my findings. For the benefit of each party and to provide absolute clarity, even if I did not accept the evidence, my findings would be same.

In the tenants own testimony he acknowledged, agreed and did not dispute the terms of the tenancy agreement. The tenant gave further testimony that he did not vacate the unit until sometime in early August 2014. Based on the tenants' testimony alone, I am satisfied that the landlord has suffered a loss for the month of August 2014 and is entitled to the recovery of \$1600.00. The landlord has not satisfied me that they mitigated their losses and made every reasonable effort to rent the unit for September by not supplying sufficient evidence to support that claim. The landlord is not entitled to any loss of revenue for the month of September.

The landlord has also failed to satisfy me that the tenant is responsible for the cost of painting the unit. The landlord did not challenge the tenants' testimony that the paint was at least 8 years old in the unit. In addition the landlord did not conduct condition inspection reports at move in or move out. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided

sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

As for the monetary order, I find that the landlord has established a claim for \$1600.00. The landlord is also entitled to recovery of the \$50.00 filing fee. . Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$850.00. 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 is granted a monetary order for \$850.00. The landlord may retain the security deposit.

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: May 13, 2015

Residential Tenancy Branch

