



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlord – MND, MNSD, (MNDC), FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover the balance of the security deposit and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the balance of the security deposit?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy in the basement unit started on May 23, 2014. The tenant rented a room and had the shared use of the common areas with another tenant. Rent for this unit was \$500.00 per month due on the first day of each month. The tenant paid a security deposit of \$250.00 on March 30, 2014. The landlord did not conduct a move in or a move out condition inspection of the unit at the start and end of the tenancy.

The tenant's application

The tenant testified that he has not provided the landlord with a forwarding address in writing. I explained to the tenant that this is a requirement under s. 38 of the *Act*. It was agreed at the hearing that the tenant's application is premature and the matter of the security deposit will be dealt with under the landlord's application.

The landlord's application

The landlord testified that the tenant failed to give proper notice to end the tenancy. The tenant sent a text message to the landlord on August 01, 2014 and informed the landlord that the tenant would be moving out at the end of August. The landlord testified that the unit was not re-rented until September 15, 2014. The landlord had originally claimed \$500.00 for a loss of rent for the entire month of September; however, as the unit was re-rented part way through the month the landlord has amended this to \$250.00 to reflect the lost rental income for September, 2014.

The tenant disputed the landlord's claims. The tenant testified that he was not aware of the proper procedures in giving Notice as he had recently arrived in Canada from overseas. The tenant testified that he had attempted to speak to the landlord a few days prior to giving Notice but was unable to get hold of the landlord.

The tenant testified that he returned to the unit on September 12, 2014 to pick up his bike. At that time he spoke to the landlord's husband and was told that the landlord's husband did not think anyone was down there so the tenant could go and collect the bike. The tenant testified that he assumed that this meant that new tenants were living in the unit on that date.

The tenant asked the landlord if it was the case that new tenants were living in the unit on September 12, 2014. The landlord responded that no one was living in the unit until September 15, 2014. There may have been cleaners there or painters.

The landlord testified that the carpet in the common area was left stained and this had to be cleaned. The landlord incurred a cost of \$100.00 for carpet cleaning and seeks to recover half this cost from both tenants residing in the unit. The landlord therefore seeks to recover \$50.00 from this tenant. The landlord referred to her photographic evidence showing staining on the carpets. The landlord testified that she has no proof as to which tenant caused the staining as it is in the common area but agreed that the other tenant had lived in the unit for a year.

The landlord testified that the unit was left unclean and contained some personal items such as toiletries, cleaning products, food and garbage. The landlord had to have the unit cleaned and engaged the services of a cleaner. The cleaner took six hours to clean on August 30, 2014; six hours to clean on September 03, 2014 and two hours to clean on September 04, 2014. The cleaner charged \$15.00 per hour to a total amount of \$210.00 although the landlord seeks to recover \$220.00. The landlord has provided a copy of the cleaner's invoice and photographs showing the areas that required cleaning. The landlord seeks to recover half the cleaning costs from each tenant of \$110.00.

The landlord agreed that as she does not know which tenant failed to remove their belongings and so the landlord has treated both tenants equally and charged half of all costs incurred.

The tenant disputed the landlord's claims. The tenant testified that he had removed all his belongings from the unit and nothing left at the unit belonged to the tenant with the exception of his bike which he later collected. The tenant testified that the other tenant continued to live in the unit for another three days after the tenant moved out. The tenant testified that he had cleaned his room thoroughly and had also cleaned the bathroom and vacuumed the carpets. The tenant testified that none of the medication shown in the landlord's pictures belongs to the tenant and the tenant has a gluten free diet so none of the food items left belonged to him. The tenant disputed ever having been in the storage room and had never used the oven so thought that this should be the responsibility of the other tenant.

The landlord seeks an Order to keep the balance of the security deposit. The landlord testified that \$140.00 was returned to the tenant and the landlord has retained \$110.00 to offset against the damages and loss of rent.

Analysis

With regard to the tenant's application; I refer the parties to s. 38(1)(b) of the *Act* which says the tenant has 15 days from the date the landlord receives the tenant's forwarding address in writing to return the tenant's security deposit or file an application to keep it. The tenant agreed that he has not provided a forwarding address to the landlord and therefore the tenant's application to recover the security deposit that remains unpaid is premature.

With regard to the landlord's application to recover a loss of rent; I have allowed the landlord to amend her application to include this section as the landlord had made it clear on the details of the dispute and the Monetary Order Worksheet that the landlord has seeking a loss of rent for September, 2014. I refer the parties to s. 45(1) of the *Act* which says that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. S. 52(a)(b) and (c) of the *Act* says in order to be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice, give the address of the rental unit and state the effective date of the notice.

The tenant failed to do these things and instead sent the landlord a text message on August 01, 2014. The landlord has testified that the unit was not re-rented until September 15, 2014. Without corroborating evidence from the tenant to show the rental unit had been rented prior to this date I find the landlord's testimony compelling. I therefore find the landlord is entitled to recover half the rent for September, 2014 of **\$250.00**.

With regard to the carpet cleaning, general cleaning and removal of personal items; this rental unit was shared between two tenants. Each tenant had their own room and shared the common areas of the living room bathroom and kitchen. The landlord has provided photographic

evidence showing that the common areas were not left reasonable clean. The tenant testified that he did clean his own room and the bathroom and vacuumed the living room and the other tenant continued to reside in the unit for another three days. The tenant also testified that none of the items left in the unit belonged to him. I find the tenant's evidence compelling that he had done his share of cleaning in the common areas. If the other tenant continued to reside in the rental unit after this tenant vacated and had lived in the rental unit for a period of a year whereas this tenant had only resided there for three months, I find this tenant cannot be held responsible for clearing the other tenant's personal items or cleaning areas of the unit used by that tenant after this tenant had vacated the unit. Furthermore, the landlord had failed to complete a move in condition inspection with this tenant when he first moved into the unit. This was not a co-tenancy under one agreement and therefore the tenants were not equally obligated under the *Act*. A tenant is responsible for having a carpet steam cleaned or shampooed at the end of the tenancy if they reside in the unit for a period of a year or they have pets that are not caged. This tenant only resided in the unit for three months and as no move in condition inspection report was completed at the start of the tenancy there is no evidence to show that the carpets were not already stained when he moved into the unit.

I find the landlord's claim to recover \$110.00 from the tenant for cleaning and \$50.00 for carpet cleaning is dismissed.

I Order the landlord to retain the security deposit of \$110.00. This amount will be offset against the landlord's claim for a loss of rent pursuant to s. 38(4)(b) of the *Act*.

As the landlord's claim has some merit I find the landlord may recover the \$50.00 filing fee from the tenant. As the tenant's claim has no merit the tenant must bear the cost of filing his own application. The landlord will receive a Monetary Order for the following amount:

| | |
|-------------------------------------|-------------|
| Loss of rental income for September | \$250.00 |
| Filing fee | \$50.00 |
| Less security deposit held in trust | (-\$110.00) |
| Total amount due to the landlord | \$190.00 |

Conclusion

The tenant's application is dismissed without leave to reapply.

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$190.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 12, 2015

Residential Tenancy Branch

