



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNDC, MND

This hearing dealt with cross applications. The landlord is seeking a monetary order for damage to the unit, site or property, an order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of the security deposit and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties confirmed that they received each other's Notice of Hearing letter, Application for Dispute Resolution and evidence. I am satisfied that the parties have exchanged said documents in accordance with the service provisions of the Act and the Rules of Procedure. Both parties gave affirmed evidence.

Preliminary Issue

The tenant had concerns about the Condition Inspection Report submitted to the Branch for this hearing. The tenant stated the copy that the Branch has; has the move out date and inspection date listed, her copy does not. The parties both agreed that the move out inspection was conducted on November 7, 2014. The landlord stated that the inspection was conducted in "real time" and was just a simple oversight. I am satisfied that neither party is prejudiced in having this report entered into this proceeding, I therefore find it admissible.

Issue to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on October 15, 2013 and ended on October 31, 2014. The tenants were obligated to pay \$3000.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1500.00 security deposit. Condition inspection reports were conducted in writing with both parties present at move in and move out. The landlord stated that the tenants did not vacate the premises as agreed upon in the tenancy agreement. The landlord stated that they did not obtain physical possession of the unit until November 7, 2014.

The landlord stated that due to the tenants over holding, he lost one month's revenue and seeks \$3000.00 for that loss. The landlord stated that he re-rented the unit for December 1, 2014. The landlord stated that the unit was painted just prior to the tenants moving into the unit. The landlord stated that the walls were damaged beyond normal wear and tear that required him to repaint the unit at a cost of "around \$3000.00. The landlord stated that the tenants agreed to forfeit their \$1500.00 security deposit at the move out inspection and signed the form to that effect.

The tenant's testimony is as follows. The tenant stated that the landlord ended the tenancy "illegally". The tenant stated "no proper notice was given as any proper tenant would" to end the tenancy by the landlord. The tenant stated that they had made attempts to extend the tenancy with the landlord but could not come to terms on length or amount of rent. The tenant stated that the landlord "cut off talks and expected a family of five to move out in 13 days". The tenant stated that this was a highly stressful time in the family's life.

The tenant stated that the landlord did not provide any further options to them and she feels this is unjust. The tenant stated that due to the landlords' actions of ending the tenancy so abruptly, her family incurred costs of \$16,840.75 for emergency shelter, lodging, moving expenses, storage, filing fees, postage and hotels. The tenant is seeking a monetary order in that amount to cover all of those expenses. The tenant stated that she disputes the landlords' entire claim. The tenant stated that she saw people moving in shortly after she vacated and doesn't feel the landlord has incurred the loss as claimed. In addition, the tenant stated that the landlord delayed the move out inspection until November 7, 2014; the tenant stated she was available and ready on November 2, 2014. The tenant stated that the landlord making her sign the condition inspection report was a "manipulation act" and was never told that she was forfeiting her deposit. The tenant stated that there was only the usual wear and tear and that the unit did not suffer any damage.

Analysis

Firstly, I address the landlords' claims and my findings as follows.

Section 44 of the Act addresses one of the issues before me as follows

44 (1) A tenancy ends only if one or more of the following applies:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

Both parties agree that the tenancy was to end on October 31, 2014 and that the tenant was to vacate the premises at that time. In the tenants own testimony she stated that "as per the lease that's when the tenancy was scheduled to end". The landlord has submitted the tenancy agreement that supports his position. Based on the evidence before me, I am satisfied that the tenancy was to end on October 31, 2014 and the landlord conducted themselves in accordance with the Act.

I also find that the tenant over held the unit thus causing the landlord to lose revenue for the month of November 2014. The landlord stated that after the unit was painted and cleaned up he advertised and was able to secure a new tenant sometime after November 20th, 2014 for December 1, 2014. The landlord has provided sufficient evidence to support his claim and I find that the landlord is entitled to \$3000.00 for loss of revenue.

The landlord is seeking to retain the \$1500.00 security deposit for having to repaint the unit. The landlord stated that the tenant willingly and knowingly acknowledged that she was forfeiting her deposit by signing the amount over. The landlord stated that the tenant was very thorough in going through the inspection and read the form very carefully. The landlord stated the tenant was aware of what she was signing and that there was no duress as she claims.

The tenant stated that the landlord had her sign the form stating the inspection was completed and then said "sign here"; on the line that states the tenant forfeits the deposit. The tenant was adamant that she did not agree to any deductions and that it was a high stress situation she was in and "wanted to get out of there as fast as I could".

The Residential Tenancy Act Regulations clearly outline all of the items that must be on the condition inspection report as follows:

Standard information that must be included in a condition inspection report

20 (1) A condition inspection report completed under section 23 or 35 of the Act must contain the following information:

- (a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;
- (b) the address of the rental unit being inspected;
- (c) the date on which the tenant is entitled to possession of the rental unit;
- (d) the address for service of the landlord;
- (e) the date of the condition inspection;
- (f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:
 - (i) entry;
 - (ii) living rooms;
 - (iii) kitchen;
 - (iv) dining room or eating area;
 - (v) stairs;
 - (vi) halls;
 - (vii) bathrooms;
 - (viii) bedrooms;
 - (ix) storage;
 - (x) basement or crawl space;
 - (xi) other rooms;
 - (xii) exterior, including balcony, patio and yard;
 - (xiii) garage or parking area;

(g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;

(h) any other items which the landlord and tenant agree should be included;

(i) a statement identifying any damage or items in need of maintenance or repair;

(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

(k) the following statement, to be completed by the tenant:

I,

Tenant's name

☐ agree that this report fairly represents the condition of the rental unit.

☐ do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

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(l) a space for the signature of both the landlord and tenant.

- (2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act *[condition inspection: end of tenancy]* **must contain** the following items in a manner that makes them **clearly distinguishable** from other information in the report:

(a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

- (b) if agreed upon by the landlord and tenant,
- (i) the amount to be deducted from the tenant's security deposit or pet damage deposit,
 - (ii) the tenant's signature indicating agreement with the deduction, and
 - (iii) the date on which the tenant signed.

When the landlord referred to damages on the wall, he stated there were “marks” throughout the unit. “Marks” could be construed as “normal wear and tear”, there are no notations of damage as the landlord stated during the hearing. The section of the report that **requires** the landlord to itemize the damage is blank. Based on the incomplete report before me the landlord has not been able to satisfy me as to what the tenant agreed to forfeit her deposit for. I will address the awarding of the deposit at the end of this decision.

I will deal with the tenants’ application and my findings as follows.

As I have found that the tenancy ended in accordance with the Act and the tenancy agreement, I do not accept the tenants’ position that it ended “illegally”. I also find that the costs incurred by the tenant are not due to the landlords’ actions and I therefore dismiss that portion of her application. The tenant has not been successful in their application.

Conclusion

The landlord has established a claim for \$3000.00. The landlord is also entitled to the recovery of the \$50.00 filing fee. I order that the landlord retain the \$1500.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the

balance due of \$1550.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application is dismissed in its entirety.

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: June 24, 2015

Residential Tenancy Branch

