



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security and pet deposits in partial satisfaction of the claim. The landlord and the tenant's agent participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issues

Amendment of Landlord's Claim

In the hearing the landlord withdrew the portion of her claim regarding \$60.00 for a plumber to repair the kitchen faucet. I therefore amended the landlord's claim accordingly to remove this portion of her claim.

Tenant's Application

The tenant has made an application for recovery of the security deposit and double recovery of the pet deposit. I informed the parties that as the landlord has applied to retain the security and pet deposits, I must consider those issues and make a determination on them in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?
Is the landlord entitled to retain the security and pet deposits?

Background and Evidence

The tenancy began on December 1, 2103. Rent in the amount of \$800.00 was payable in advance on the first day of each month. At the outset of the tenancy, the tenant paid the landlord a security deposit of \$400.00 and a pet deposit of \$400.00. The parties agreed that at the outset of the tenancy, the tenant and an agent for the landlord carried out a move-in inspection.

The tenancy ended on October 10, 2014. The landlord and the tenant carried out a move-out inspection and the landlord and the tenant signed the condition inspection report. In the report the landlord indicated that everything in the rental unit was in good condition. The tenant provided her forwarding address in writing in the report.

Landlord's Claim

The landlord stated that the tenant left the rental unit dirty and damaged. In support of this portion of her claim, the landlord submitted photographs that purport to show damaged and dirty areas of the rental unit, including walls that the tenant had painted in distinctive colours and designs. The landlord stated that she could not submit a copy of the move-in inspection report because her agent lost it. The landlord stated that because of the uncomfortable situation with the tenant at the end of the tenancy, she chose not to address any of those deficiencies in the move-out inspection report. The landlord confirmed that no damage was done by the tenant's cat.

The landlord also claimed \$400.00 for lost revenue from October 15 to 30, 2014. The landlord entered into a new tenancy agreement for a tenancy to begin on November 1, 2014; the new tenant signed the agreement on October 10, 2014, and while the date written by the landlord is somewhat illegible, it appears that she signed the agreement on October 9, 2014. The landlord acknowledged in the hearing that she did allow the new tenant to gradually move in his furniture before he took possession on the first of the month.

Tenant's Response

The tenant responded that the landlord's claim was without merit. The tenant submitted that the landlord signed off on the move-out inspection report indicating that everything was fine. The tenant submitted emails showing that during the tenancy the landlord had complimented the tenant on her paint job, and the landlord did not indicate that the tenant would have to restore the unit to neutral colours at the end of the tenancy. The tenant submitted that some of the alleged damage was pre-existing, and she was not given a copy of the move-in inspection report that was completed by the landlord's agent. The tenant submitted that some of the photos were clearly taken after she had moved out, and the photograph showing tile grout was an extreme close-up that showed where rusty water had stained the grout. The tenant's agent stated that she herself had scrubbed between the tiles with a toothbrush.

In regard to the issue of lost revenue, the tenant submitted that the landlord had other tenants who could have moved in on October 16, 2014, and the new tenant appeared to have moved into the unit before November 1, 2014.

Analysis

Cleaning, Painting and Repairs

I find that the landlord has failed to provide sufficient evidence to support this portion of her claim.

Under section 21 of the *Residential Tenancy Regulation*, a completed condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, on October 10, 2014 the landlord signed off on the move-out condition inspection report, indicating that the condition of the rental unit was good. The landlord's evidence did not clearly show unreasonably dirty areas or items in the rental unit; nor did it show any damage that could not have been (1) pre-existing; (2) the result of normal wear and tear; or (3) caused by the new tenant. I accept the evidence of the tenant that the landlord complimented her on the paint job, and the landlord did not indicate that the tenant would have to restore the unit to neutral colours at the end of the tenancy.

Lost Revenue

I find that the landlord has failed to establish that she is entitled to lost revenue for the latter half of October 2014. The landlord appears to have signed a tenancy agreement with the new tenant on October 9, 2014 for a tenancy that was to begin on November 1, 2014, and the landlord stated that she did allow the new tenant to begin moving in during the latter half of October 2014. The landlord did not provide sufficient evidence to show that she took reasonable steps to attempt to re-rent the unit for the latter half of October 2014.

Filing Fee

As the landlord's application was unsuccessful, she is not entitled to recovery of the filing fee for the cost of her application.

Security and Pet Deposits

As the landlord is not entitled to retain any amount from the security deposit, it must be returned to the tenant, in the amount of \$400.00.

Under section 38 of the Act, a pet deposit may only be used for damage done by a pet. The landlord did not allege any damage done by the tenant's pet; therefore, the landlord was required to return the pet deposit to the tenant within 15 days of the tenant providing her forwarding address in writing. In this case, the tenant provided her forwarding address in writing in the move-out condition inspection report on October 10, 2014. The landlord did not return the pet deposit, and therefore the tenant is entitled to double recovery of the pet deposit, in the amount of \$800.00.

Conclusion

The landlord's application is dismissed in its entirety.

The tenant is entitled to recovery of the security deposit of \$400.00 and double recovery of the pet deposit, in the amount of \$800.00. I accordingly grant the tenant an order under section 67 for the balance due of \$1,200.00. This order may be filed 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: July 15, 2015

Residential Tenancy Branch

