



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANDMARK REALTY MISSION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order under the Residential Tenancy Act (the Act) to recover a claimed shortfall in the agreed rent pursuant to the tenancy agreement, and recovery of the filing fee associated with this application, and an Order to retain from the security deposit an amount in satisfaction of their monetary claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The tenant acknowledged receiving the application and evidence of the landlord. Prior to concluding the hearing both parties in attendance acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The tenancy began December 01, 2014 as a month to month written tenancy agreement and ended February 28, 2015 when the tenant vacated. The tenancy agreement states that rent is in the amount of \$1550.00 per month - payable in advance on the first day of each month. At the outset of the

tenancy, the landlord collected a security deposit from the tenant in the amount of \$700.00, of which they retain \$500.00 in trust.

The tenancy agreement further states that: * *A \$150 monthly rent credit will be given to the tenants in exchange for Tenant improvements that will be completed in the month of December 2014, as per the attached list* (as written). The parties agree that the tenant was permitted to reduce the payable rent by \$150.00 as of December 2014 if in compliance with the above stipulation of the agreement, and paid the reduced rent of \$1400.00 for the duration of the 3 month tenancy. At the end of the tenancy the landlord determined the tenant did not perform all of the tenant improvements as prescribed by the tenancy agreement clause and the referenced attached list and as a result did not qualify for the agreed rent credit / reduction in the accrued sum of \$450.00. The tenant claims they held up their side of the tenancy agreement and were entitled to pay only \$1400.00 and should not have to pay full rent.

The tenant testified that they agreed to perform a quantum of work in exchange for reduced rent, with the view of upgrading aspects of the rental unit to accommodate their needs. And, the parties agreed that all work would be, *“done in a good and quality workmanlike manner”*. The parties agreed that some work was performed; however disagree as to the scope of the work required by the tenancy agreement in exchange for a reduction of rent.

Considerable time of the hearing was devoted to the parties' testimony as to their understanding of the communication around the time that the tenancy agreement was entered into in respect to the tenant improvements prescribed by the *attached list* in exchange for a reduced rent / rent credit. The landlord testified that the *attached list* was a document prepared by the tenants titled *Proposal for Rental House with shop at [dispute address] (proposal document)*. The tenants testified they gave the landlord this proposal document upon initial application to rent as a good faith negotiating tool for lowered rent to \$1250.00 per month. The tenant testified the proposal document clearly states their suggestions and requests for permissions but does not agree to fulfillment of the proposals to the strict extent stated in the tenancy agreement, in exchange for a

monthly reduction / credit in rent. None the less, the tenant agrees they requested a reduction in rent on their good faith and signed proposal they would attend to the improvements if their application to rent was accepted. The landlord testified they relied on the entirety of tenant's proposal document as the tenant's agreement to supply and install all of the items referenced in the document and that all work was to be completed by the tenant within the month of December 2014. The tenant testified they were not aware that the landlord interpreted all of the proposal document references as comprising an obligation for them to attend and complete all of the referenced work, nor that the document, in its entirety, was the *attached list* used by the landlord as qualification for reduced rent. The contrast in the parties' testimony clearly highlighted the parties do not agree as to the scope of the work for qualification of the rent reduction. The landlord testified that they drafted the tenancy agreement and that they wanted the proposal document included in the agreement as the stated, *attached list* following discussions with the tenant and their assurance they would do the work and could accomplish the work during the first month of occupancy. On questioning if the timeline was realistic, the parties did not agree on the tenant's ability to accomplish all the work on the proposal document within the first month.

Analysis

The landlord, as applicant, bears the burden of proving their monetary claims on balance of probabilities.

On preponderance of the evidence before me, I find that the document evidence comprising the referenced *attached list* within tenancy agreement may be vague in certain statements, but it is an instrument of the tenant and in that document the tenant clearly includes: "Tenants will assume the expense for changes and upgrades in the house" and, " If necessary the tenant will provide help to have the shop and house it ready on or before December 1st. (as written). I accept the tenant's testimony they made their proposals for improvements in good faith. I further accept the tenant's signed evidence they would assume expenses for the improvements and that they could accomplish their proposals even before occupying the rental unit on December 1st

2014. As a result of all the above, I find the rent terms of the tenancy agreement are significantly clearer than they are ambiguous. I prefer the landlord's evidence, in which the tenant agreed to accomplish the entire *attached list* in exchange for a rent reduction / credit in the amount of \$150.00 per month for the specified time - over the tenant's evidence, in which they assert they did not agree to all the work on the *attached list* in the tenancy agreement. I find the tenant in breach of the tenancy agreement respecting the payment of rent and that the landlord is entitled to the rent in full of \$1550.00 per month for the 3 month period in question. As the tenant paid \$1400.00 each month of occupancy I grant the landlord's application in the sum of \$450.00. As the landlord was successful in their claim they are entitled to recover their filing fee of \$50.00, for a total award of **\$500.00**.

Conclusion

The landlord's application has been **granted**.

I Order that the landlord may retain the balance of the tenant's security deposit of **\$500.00** in full satisfaction of their award.

This Decision is final and binding on both parties.

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: August 26, 2015

Residential Tenancy Branch

