



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MURRAY HILL DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on May 08, 2015. The Landlord filed seeking to obtain 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 tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord's Agent (Landlord) and the Tenant J.C. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Upon review of the application and the named listed as the second respondent, C.C., it was determined that the Landlord listed an incorrect name on his application. Furthermore, only the first respondent, J.C. was properly served notice of the Landlord's application and this proceeding. Accordingly, the claim against the second named respondent was dismissed, without leave to reapply.

Each person gave affirmed testimony. The Landlord confirmed that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served the Tenant. No issues were raised regarding service or receipt of that evidence.

During the hearing each party was given the opportunity to provide their evidence orally, and respond to each other's testimony. Following is a summary of the evidence and submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The undisputed evidence was the Tenant began occupying the rental unit as an occupant or roommate of another tenant sometime in September 2014. When that tenant moved out, J.C. entered into a new written tenancy agreement which began on March 1, 2015 and was set to end August 31, 2015. Rent was payable on the first of each month in the amount of \$885.00 and the security deposit of \$442.50 was transferred to the new tenancy agreement when it was signed in March 2015.

A condition inspection report form was not completed in March 2015 when the Tenant entered into a written tenancy agreement. On February 23, 2015 the Tenant gave the former landlord his written notice to end his tenancy effective March 31, 2015. The unit was re-rented effective April 1, 2015.

The former landlord did not schedule a move out inspection with the Tenant. The Tenant vacated the rental unit on approximately March 24, 2015.

The Landlord testified that he became manager of this building effective March 25, 2015. When he took over the building the Tenant's rental unit was already vacant so on March 31, 2015 he conducted the inspection and completed the move out form by himself. He later changed his testimony to say he could not remember the exact date he conducted the inspection and that it may have been on March 30, 2015.

The Landlord argued that they had to pay \$300.00 to clean the rental unit plus \$63.00 to have the carpet cleaned. He argued that the new tenant moved in on April 1, 2015 and complained about the strong pet urine smell coming from the carpets. The new tenant ended up moving out of the unit until the carpets were replaced. The Landlord now seeks \$725.26 for costs incurred to replace the carpet.

In support of their claim the Landlord submitted documentary evidence which included, among other things, copies of: the move out condition form completed in absence of the Tenant; an invoice dated 2/21/2011 for carpet replacement in the rental unit; a cleaning invoice dated April 20, 2015; a hand written list of times spent working in the unit; and the tenancy agreement.

The Tenant disputed the Landlord's claims and questioned how the Landlord could file a claim after the Tenant was already given his security deposit back. The Tenant argued that he cleaned up his rental unit prior to moving out as per the former landlord's instructions. He said his former landlord told him not to worry about having the carpets cleaned and she gave him a list of things to do before he moved out, which he

completed. He submitted that he was told the former landlord was fired so he left the keys inside the rental unit and left. He argued that he had no interactions with this new Landlord. He argued that his tenancy ended and his security deposit was returned so he should not owe the Landlord anything.

The Landlord confirmed that the former landlord was fired on or around March 24, 2015 and he did not start working until March 25, 2015. He did not have any interactions with this Tenant and could not explain why the Tenant's security deposit was returned other than to say it would have been sent to him by their head office.

Analysis

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The party making the claim for damage or loss bears the burden to prove their claim on a balance of probabilities.

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit.

Section 35(1) of the *Act* stipulates that the landlord and tenant **together** must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. [My emphasis added with bold text]

The undisputed evidence is the Tenant had vacated the rental unit on or before March 24, 2015, ending the tenancy pursuant to section 44(1)(d) of the *Act*. The Tenant dealt with the move out requirements with the former landlord and was given his security deposit back. The former landlord was fired on March 24, 2015 and the new Landlord conducted an inspection of the rental unit on or after March 30, 2015, in absence of the Tenant. The rental unit was reoccupied as of April 1, 2015. The Landlord relied upon a handwritten list of dates for work performed however exact dates are not written on that

document. The Landlord also relied on receipts for work that was completed after the Tenant vacated the unit and after another tenant had occupied the rental unit.

In consideration of the above, I find the Tenant's legal obligation to the tenancy ended on March 24, 2015 when he dealt with the former landlord. In addition, I do not give the move out condition inspection report any evidentiary weight as it was completed in absence of the Tenant, in breach of section 35 of the *Act*.

In addition, it would be unconscionable to hold a former tenant responsible for the condition of a rental unit or for work conducted days or weeks after another tenant had possession of the unit. Accordingly, I find the Landlord provided insufficient evidence to prove entitlement to monetary compensation and the claim is dismissed in its entirety.

Conclusion

The Landlord was not successful with his application and it was 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: October 28, 2015

Residential Tenancy Branch

