



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF O

Introduction

This hearing dealt with monetary applications by the landlord and the tenant. The landlord, the tenant and an advocate for the tenant 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 affirmed 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.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

On February 22, 2015 the landlord and the tenant signed the tenancy agreement for a fixed term tenancy to begin on March 15, 2015 and end on March 31, 2016. Rent in the amount of \$1,700.00 was 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 \$850.00. On March 15, 2015 the landlord and the tenant carried out a move-in inspection and signed the condition inspection report.

Beginning March 21, 2015 the tenant communicated with the landlord, via email, regarding her concerns with the rental unit and how it was affecting her. In particular, the tenant indicated that she suffers from multiple chemical sensitivities and the smell

was making her really sick. On April 18, 2015 the tenant emailed the landlord the message “rescinding the lease.” On May 9, 2015 the landlord and the tenant met at the unit and carried out a move-out inspection, and the tenant gave the landlord her forwarding address in writing. The tenant paid the rent for May 2015.

Landlord's Claim

The landlord has claimed \$2,535.00 in lost revenue. The landlord submitted evidence to show that he advertised to re-rent the unit as soon as possible. The landlord stated that he was unable to re-rent for June 1, 2015, and he had to drop the rent to \$1,550.00. The landlord stated that he re-rented the unit beginning June 20, 2015. The landlord stated that he lost \$1,185 in rent for June 2015 and a further \$150.00 per month for the last nine months of the tenant's fixed term.

The tenant's response to the landlord's claim was that the tenant was forced to vacate the rental unit because the landlord had misrepresented the rental unit. The tenant stated that she was quite thorough when she inspected the rental unit, because she has high chemical sensitivities. The tenant stated that she asked the landlord if a dog had lived in the suite and the landlord said no. The tenant stated that she asked about a “perfume-ish” smell in the unit and the landlord said it was from his wife. The tenant stated that she asked the landlord if chemicals had been used in the washer and the landlord said no.

The tenant stated that she had a representative of an “odour eradication” company do an assessment of the unit, and their conclusion was that dog urine had soaked through the flooring, then chemicals were used to cover up the scent. The tenant stated that she spoke to the landlord about the smells, especially the smell from the washing machine, but the landlord did not remedy the problem.

Tenant's Claim

The tenant has claimed compensation totalling \$3,343.65 for the “extra expenses ... incurred as a result of [the landlord's] misrepresentations.” The tenant submitted that this includes “rent and alternative accommodations, moving and storage fees, appliance examination fee, and mail forwarding fee.”

The landlord's response to the tenant's claim was as follows. The landlord confirmed that he lived in the rental unit before the tenancy, and he did have a dog, but he never told the tenant that he did not have a dog. The landlord stated that the tenant viewed the rental unit twice before entering into the tenancy agreement, and there are no

chemical smells or stains from pet urine noted on the move-in condition inspection report. The landlord questioned the validity of the chemicals assessment, as it was done by a company that provides chemical removal services. The landlord stated that the new tenants have not had any problems with the washer. The landlord stated that he believes the tenant was just trying to get out of the lease.

Analysis

Landlord's application

I find that the landlord has established his claim for lost revenue. I accept the landlord's evidence that he took reasonable steps to re-rent the unit but was unable to do so until June 20, 2015, and at a reduced rent of \$1,550.00 per month. I grant the landlord lost revenue of \$1,185.00 for June 2015 and \$750.00 for the balance of the rent for the months of July through November 2015. The landlord's application for future lost revenue is premature, and I therefore dismiss that portion of the landlord's claim with leave to reapply.

I do not accept the tenant's submission that the landlord fundamentally misrepresented the condition of the rental unit, such that the tenant was free to "rescind" the lease. As noted by the landlord, there is no indication on the move-in condition inspection report of a chemical smell. The tenant stated that she was "quite thorough" when she inspected the rental unit and asked the landlord questions; however, despite her "high chemical sensitivities," the tenant did not ask the landlord for any written assurances of a chemical-free environment. I find that the tenant's evidence regarding the chemical assessment and the quote for washer repairs are of little weight, as the authors of those documents did not give oral testimony and were not available for cross-examination. I find that the tenant decided to breach the lease and move out rather than make an application for orders for repairs or other orders.

Tenant's Application

Based on the reasons set out above, I find that the tenant is not entitled to monetary compensation as claimed. I find that the landlord did not misrepresent the rental unit, and the tenant chose to incur the expenses she did without authorization of the landlord.

Filing Fees

As the landlord's application was successful, he is entitled to recovery of the \$50.00 filing fee for the cost of his application.

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

Conclusion

The landlord is entitled to \$1,985.00. I order the landlord to retain the security deposit of \$850.00 in partial compensation of this amount and I grant the landlord an order under section 67 for the balance due of \$1,135.00. 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: November 18, 2015

Residential Tenancy Branch

