



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC, FF

For the landlord: MNSD, MNDC, MND, MNR, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit, and unpaid rent, and for recovery of the filing fee paid for this application.

This hearing began on October 29, 2015, and an Interim Decision in this matter was entered on that date. The Interim Decision should be read in conjunction with this Decision and further, it is incorporated herein by reference.

In the Interim Decision, I determined that the hearing would be adjourned and reconvened in order to hear the landlord's application, as the tenant's application had been fully heard at the original hearing.

This hearing proceeded on landlord's application for dispute resolution. I do note that when the landlord began testifying, she made several references to the tenant's application, which appeared to be a further response. I cautioned the landlord that her response to the tenant's application was put forth at the original hearing and that she should now begin supporting her own application. Despite this caution, the landlord made several other attempts to further respond to the tenant's application, stating that she was not given the opportunity to fully respond. I informed the landlord that she was given a full chance to respond at the original hearing and I would no longer hear that matter.

During both hearings, the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and

make submissions to me. I note that neither party presented any issue regarding the service of the other's evidence.

I have reviewed all oral, photographic, and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to monetary compensation from the landlord and for recovery of the filing fee paid for this application?
2. Is the landlord entitled to retain the tenant's security deposit, to further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that this 1 year, fixed term tenancy began on May 1, 2015, ended on June 1, 2015, monthly rent was \$1950.00, and the tenant paid a security deposit of \$975.00. The security deposit was returned to the tenant and is no longer an issue.

Tenant's application

The tenant's monetary claim was comprised of rent paid for \$1950.00, cleaning of \$200.00, filing fee of \$100.00, moving/filing cost of \$245.84, photo costs of \$82.08, aluminum tape to repair the dryer for \$8.85, moving costs for \$588.00, and water used of \$33.33.

The tenant's relevant evidence included, but was not limited to, the written tenancy agreement, email communication between the parties, a condition inspection report signed by the tenant only, photographs of the rental unit, invoices and receipts, and an emailed notice to the landlord that the tenant was vacating.

The tenant and the landlord, respectively, provided the following testimony in support of and in response to the tenant's application.

Compensation of 1 month's rent

The tenant submitted that he was entitled to this compensation due to the condition of the rental unit, describing that the rental unit was in complete disarray, unclean, unrepaired and not safe for habitation.

The tenant submitted that he viewed the rental unit in February and was promised that it would be ready in March; however, that was not the case.

The tenant submitted that he did not have a move-in inspection with the landlord and therefore conducted his own inspection, showing the poor and unsafe condition of the rental unit.

In response, the landlord submitted that the tenant viewed the rental unit, understood that the condition of the home showed that there were repairs still to be done, and that not all repairs would be completed by the time of occupancy.

The landlord submitted that she did not realize how long it would take to complete repairs and did not realize that building inspectors would be involved. Another point of delay was the arrival of the bathroom vanity, as it was broken.

The landlord confirmed that there was no sense in conducting an inspection of the premises in that condition, as she was in the process of doing renovations.

Cleaning

The tenant submitted the rental unit was filthy and required cleaning.

In response, the landlord submitted that the rental unit was clean, as the previous tenants left the rental unit that way. The landlord conceded the bathroom was old, which gave the appearance of being dirty.

Moving costs

The cost claimed by the tenant was due to having to move items back and forth.

Aluminum tape

The tenant claimed this amount due to his repair to the dryer.

Moving costs

The tenant submitted that he is entitled to this amount as there was never any peace and enjoyment of the rental unit, that he never had full use of the home, that contractors and the landlord were in and out of the rental unit, and that he never was able to fully unpack.

In response, the landlord submitted the tenant exaggerated the state of the rental unit as it was not uninhabitable.

Water bill

The tenant submitted the original agreement was that the parties would split the costs of the water.

In response, the landlord submitted that the irrigation was turned off during the tenancy.

Tenant's witness

The witness, who was also listed as a party to this dispute as a tenant, submitted that at the beginning of the tenancy, there was a lot of unfinished work to be done to the rental unit, and that they thought the work would go more quickly.

The witness submitted that the floor was never finished, there was only one functioning bathroom, and that she spent a lot of time cleaning the rental unit.

The witness submitted further that they were never able to unpack their boxes and that contractors were in and out of the rental unit during the tenancy to complete the renovations.

Landlord's application

The landlord's monetary claim was comprised of loss of rent revenue for June 2015 of \$1950.00, cleaning of \$200.00, carpet cleaning of \$256.00, disposal fee of \$37.40, trailer rental of \$39.20, garbage pickup of \$60.00, filing fee of \$50.00, stationary supplies of \$131.52, registered mail fee of \$10.00, and quote for express mail of \$16.00.

The landlord's relevant evidence included, but was not limited to, a written response to the tenant's application and his photographs, a mutual agreement to end the tenancy signed by both parties, receipts and statements from contractors, and photographs which were taken prior to renovations.

The landlord and the tenant, respectively, provided the following testimony in support of and in response to the landlord's application.

The landlord submitted that she was not allowed to mitigate her loss for the June 2015 rent as the tenant provided insufficient notice he was vacating, and further, that she felt threatened to sign the mutual agreement to end the tenancy, as the tenant gave an indication he would have a very loud birthday party if not.

The landlord submitted further that she was entitled to cleaning costs as the tenant did not clean the rental unit after he vacated. The landlord submitted further that the tenant damaged the rental unit during the tenancy and left garbage, and combined with the cleaning, all caused the landlord to incur the claimed expenses.

In response, the tenant submitted that the landlord did not want him as a tenant, that he left the rental unit cleaner than when the tenancy began, and that the garbage was there when the tenancy began, due to the renovations.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the tenant and the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Tenant's application

Compensation of 1 month's rent

Section 32 of the Act states that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

In reviewing the evidence of the parties, I find it undisputed that the landlord's renovations to the rental unit were not fully complete by the start of the tenancy on May 1, 2015; however, in reviewing the photographic evidence of the tenant, I find the tenant failed to substantiate that the rental unit was unliveable. I find the tenant did have use and occupancy of the rental unit during the month of May 2015, and had at least use of the majority of the rental unit. Additionally, the tenant, even after viewing the state of the rental unit at the beginning of May 2015, still made the decision to move in. I therefore find the tenant failed to take reasonable steps to mitigate his loss, and as such, I decline to award him reimbursement of the rent for May 2015. This claim is dismissed.

Cleaning costs; moving costs; aluminum tape

As to the tenant's claim for moving expenses, I find that these are choices the tenant made, both in entering into a tenancy and ending a tenancy, on how to facilitate his moving and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant.

Likewise, I find the tenant chose to clean the rental unit and to use aluminum tape for a repair, and I cannot find the landlord is responsible under the Act for choices made by the tenant.

These claims are therefore dismissed.

Water bill

I find the tenant has submitted insufficient evidence to support his claim for compensation for a water bill and it is dismissed.

Due to the above, the tenant's application is dismissed.

Landlord's application

Loss of rent revenue for June

As to the landlord's claim for loss of rent revenue for June 2015, section 44(1)(c) states that one way a tenancy ends is when the landlord and tenant agree in writing to end the tenancy. In this case, the landlord submitted a copy of a signed mutual agreement of the parties to end the tenancy on June 1, 2015, on the standard Residential Tenancy Branch ("RTB") form. As such, I find by operation of the parties' mutual agreement, the tenancy ended on June 1, 2015, and therefore the landlord is not entitled to loss of rent revenue beyond the agreed upon end of tenancy.

Cleaning; carpet cleaning; disposal fee; trailer rental; garbage pickup

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As to these claims of the landlord, I find a critical component in establishing a claim for damage and cleaning, and the resulting expenses is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, the undisputed evidence is that the landlord failed in her obligation under of the Act of conducting an inspection of the rental unit and completing the inspection reports at the beginning and the end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenants was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant. I also found that the landlord's photographic evidence was of no probative value as the photographs were taken apparently at some point prior to renovations.

Due to the above, I find the landlord submitted insufficient evidence to support these monetary claims against the tenant for damaged and unclean property and the claims are dismissed.

Stationary supplies; registered mail fee; quote for express mail

I find that the Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. As such, I find the landlord is not entitled to these expenses and they are dismissed.

Due to the above, the landlord's application is dismissed.

Conclusion

For the reasons presented above, the applications of both parties are dismissed.

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: January 27, 2016

Residential Tenancy Branch

