



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's agent, DF ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she is the tenant services coordinator for the landlord company named in this application and that she has authority to represent it as an agent at this hearing. The landlord's agent, KK, observed the hearing but did not participate.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). The landlord confirmed that the Application was sent to the tenant by way of registered mail on December 4, 2015. The landlord provided a Canada Post receipt, tracking number and printout indicating that the item was unclaimed by the tenant. The tenant said that she received the documents by email but that she had reviewed them and was prepared to proceed with this hearing on the basis of the landlord's Application and written evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application and I proceeded with the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed that this month-to-month tenancy began on April 1, 2015. The tenant said that she moved out of the unit on November 18, 2015. Both parties agreed that the move-out condition inspection report was completed until November 27, 2015. Both parties agreed that monthly rent in the amount of \$1,145.00 was payable on the first day of each month and a security deposit of \$572.50 was paid by the tenant and the landlord continues to retain the deposit. A copy of the written tenancy agreement was provided for this hearing. Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy. The landlord agreed that she received a forwarding address from the tenant on November 27, 2015, on the move-out condition inspection report. The tenant said that she agreed on the move-out condition inspection report that the landlord could retain \$135.00 for carpet cleaning from her security deposit. The landlord's application was filed on December 2, 2015.

The landlord seeks a monetary order of \$135.00 for carpet cleaning and \$1,125.00 for December 2015 rental loss. The landlord also seeks to recover \$50.00 filing fee paid for its application.

The landlord said that the tenant provided less than one month's notice to vacate the unit, as she emailed the landlord on November 10, 2015 to vacate by November 30, 2015. The tenant said that she telephoned the landlord on November 3, 2015 and provided notice on November 10, 2015, so the landlord had ample time to find a tenant but no efforts were made by the landlord November 2015.

The landlord said that she posted signs outside the rental building and an online rental advertisement on the landlord company's website but she did not provide a date for such advertising, indicating that it would have been done immediately. The tenant disputed this, stating that she checked the landlord's website every day and outside the rental building, and no advertisements were posted until sometime in December 2015. The landlord did not provide a copy of the online advertisement or a photograph of the sign outside the building. The landlord claimed that a person from the internal transfer waiting list was the new tenant who began occupying the unit, after telephone calls were made to find people from this list. The landlord said that she did not know how many showings were done for the unit.

The landlord said that she did not know what rent was advertised for the unit, but likely the same rent as the tenant's for \$1,145.00. The landlord then indicated that the current rent for the new tenant who moved into the unit on January 1, 2016, was \$1,125.00, so she was only seeking this reduced amount from the tenant. The tenant said that the new tenant moved in on December 26, 2015 as per her hydro bill, but the landlord disputed this saying that the new tenant's tenancy agreement indicates otherwise. The tenant said that the unit was empty from November 18, 2015, even though the move-out condition inspection was done on a later date.

Analysis

Carpet Cleaning

As the tenant agreed during this hearing and in the move-out condition inspection report to the carpet cleaning charge of \$135.00, I award the landlord this amount.

Loss of Rent

Section 45 of the *Act* requires a tenant to provide one month's written notice to the landlord to end a tenancy. The notice must be given on the day before rent is due. Both parties agreed that rent was due on first day of each month, as noted in the tenancy agreement. The tenant gave notice on November 10, 2015 to leave by December 1, 2015, as per her email to the landlord. Email is not a permitted form of service under section 88 of the *Act*. However, in accordance with section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served with the tenant's notice to vacate by email on November 10, 2015, as the landlord said that she received the email and provided a copy of it. This is less than one month's notice. Therefore, I find that the tenant is liable to pay for a loss of rent to the landlord.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises after receiving notice of the tenant's intention to vacate the rental unit. However, I find that the landlord failed to fully mitigate its losses. The landlord did not provide a copy of any advertisements, did not know the rent that was advertised, and did not indicate when advertising began. The tenant disputed the landlord's claims, indicating that she checked the landlord's website and outside the building and no advertising was done until December 2015. I find that this delay in advertising, after the landlord received notice on November 10, 2015, impacted the ability to re-rent, particularly when the landlord called someone from a wait list that was already available to the landlord.

The landlord is claiming for one month's rental loss of \$1,125.00 for December 2015. Accordingly, I find that the landlord is entitled to \$860.00 on the basis that I find that the landlord failed to fully mitigate its losses.

As the landlord was mainly successful in this Application, I find that it is entitled to recover the \$50.00 filing fee from the tenant.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenant said that she moved out of the unit on November 18, 2015. Both parties agreed that the tenant provided a written forwarding address on November 27, 2015 on the move-out condition inspection report. However, the landlord applied on December

2, 2015, within 15 days of November 27, 2015, to retain the deposit. Therefore, I find that the tenant is not entitled to the return of double the value of her deposit.

The landlord continues to hold the tenant's security deposit, totalling \$572.50. Over the period of this tenancy, no interest is payable. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$472.50 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: March 30, 2016

Residential Tenancy Branch