



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AYW MAINTENANCE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, 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, for damage to the rental unit, 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 two agents, "landlord STS" and "landlord SAS" (collectively "landlord"), the tenant and the "tenant's agent" HF (collectively "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. Landlord STS confirmed that he is the general manager and shareholder, and landlord SAS is the office administrator and manager, both for the landlord company named in this application and that they both had authority to represent it as an agent at this hearing. This hearing lasted approximately 117 minutes in order to allow both parties to fully present their submissions. Both parties initially intended to call two witnesses to testify but confirmed that they did not want to, as the respondent party did not wish to cross-examine the witnesses.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and the landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application and the landlord was duly served with the tenant's written evidence package. The tenant confirmed that she received the landlord's written evidence late, less than 14 days prior to the hearing, but that she had reviewed the evidence and was ready to proceed with the hearing. Accordingly, I

proceeded with the hearing as both parties confirmed they were ready to proceed and I considered both parties' evidence packages as both parties consented.

This hearing was initially scheduled to occur on April 4, 2016 but was rescheduled at the initiative of the Residential Tenancy Branch to occur on April 8, 2016.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for damage to the rental unit, 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 award 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 all the documentary evidence and the testimony of the 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 to the following facts. This tenancy began on December 1, 2014 for a fixed term to end on November 30, 2015. This tenancy ended on September 24, 2015. Monthly rent in the amount of \$2,700.00 was payable on the first day of each month. A security deposit of \$1,350.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord provided a copy of the written tenancy agreement with its Application. During the hearing, the landlord confirmed that the company named in this Application was a subsidiary of a larger company, "L," that the tenant said was the correct landlord for this rental unit.

The landlord indicated that a move-in condition inspection report was completed, while the tenant disagreed. The tenant agreed that she was provided with two opportunities to complete a move-out condition inspection report but she did not attend because she was intimidated by the landlord. The landlord provided a copy of a move-out condition inspection report that he completed without the tenant present. The tenant said that she gave a forwarding address to the landlord by way of email, while the landlord disputed this saying he did not receive an address. The tenant said that she did not give the

landlord written permission to keep her security deposit. The landlord's application was filed on September 21, 2015.

During the hearing, the landlord confirmed that he was no longer seeking \$4,000.00 for property damage and landscaping, but rather \$2,489.55 for general property damage and landscaping and \$600.00 for damage to bathrooms. The landlord also confirmed that he was seeking \$191.27 for utilities, rather than the \$500.00 he originally applied for, and an additional \$5,400.00 for two months' loss of rent. The landlord also seeks to recover the \$100.00 filing fee paid for this Application.

Analysis

Loss of Rent

The landlord seeks a loss of rent of \$5,400.00 total for October and November 2015 from the tenant.

I find that the landlord and tenant entered into a fixed term tenancy for the period from December 1, 2014 to November 30, 2015.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If she does, the tenant could be liable to pay for a loss of rent to the landlord. In this case, the tenant vacated the rental unit on September 24, 2015, before the completion of the fixed term on November 30, 2015. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of her tenancy agreement and the Act.

Section 7(1) of the Act establishes that a tenant who does not comply with the Act, the regulations or the 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.

On August 10, 2015, the tenant advised the landlord that she had purchased a property and wanted to terminate her lease early by September 30, 2015, saying that the landlord was intending to list the property for sale in any event. However, I find that the landlord notified the tenant that he did not wish to sell the rental unit, as early as March 11, 2015, when he sent an email to the tenant indicating that she was required to honour the remainder of the fixed term lease period. The landlord sent a further email on May 27, 2015, advising the tenant that a temporary offer to breach the lease without a penalty was not a possibility. The landlord also responded to the tenant's email of August 10, 2015, on the same date, stating that she was required to honour her lease term. The tenant sent an email to the landlord on September 17, 2015, indicating that she was intending on vacating the unit at the end of the fixed term on November 30, 2015, which shows she was aware of the landlord's intention to carry out the fixed term agreement. I find that the landlord clearly communicated to the tenant, early and repeatedly, that he was not intending on selling the property right away and that he expected the tenant to honour the fixed term tenancy agreement. Therefore, I find that the tenant is responsible for a loss of rent to the landlord.

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 written notice of the tenant's intention to vacate the rental unit. The landlord posted two online rental advertisements and both parties provided copies of these ads. However, I find that the landlord has failed to fully mitigate its losses under section 7(2) of the *Act*. The landlord increased the rental price to \$2,800.00 and \$2,900.00, rather than advertising at the same amount as the tenant's rent at \$2,700.00 or a reduced rental price. The landlord advertised a rental period of "2 or 3 months" in the ads, which the landlord said that some potential tenants responded to by asking if a longer term was available. The landlord said that he offered the unit for a six month period to one potential tenant but it did not work out. The landlord said that he wanted a short term rental until the spring season, rather than a long term rental. Given the increased rental price and the shorter term rental period offered by the landlord, I find that the landlord failed to offer incentives to try to attract potential tenants and actually detracted potential tenants from renting. The landlord provided a copy of six emails from potential tenants, of which three emails identified the short rental period as an issue.

The landlord is claiming for two months of rental loss from October to November 2015, totalling \$5,400.00, the period during which the property could not be re-rented due to the tenant's breach. I find that the tenant breached the fixed term tenancy agreement,

vacated without proper notice to the landlord and that she is responsible for losses suffered by the landlord. The tenant said that she notified the landlord on August 10, 2015 by email that she was leaving by September 30, 2015, and the landlord said that he became aware on October 2, 2015, when the tenant emailed him regarding vacating the unit. Accordingly, I find that the landlord is entitled to a half month's rent for each of October and November 2015, totalling \$2,700.00, for a failure to mitigate, as noted above. I make these findings on the basis that two months is a reasonable period of time to advertise, show and re-rent the rental unit.

Other Relief

I award the landlord \$191.27 in unpaid utilities, as the tenant agreed to pay this amount during the hearing.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord said that he provided the tenant with a letter, dated December 1, 2014, which both parties signed, that serves as a move-in condition inspection report. However, I find that this letter does not comply with the requirements for a move-in condition inspection report under section 20 of the *Regulation*. Therefore, I find that the landlord did not complete a proper move-in inspection report, as required by section 23 of the *Act*.

I find that the landlord was unable to establish the condition of the property when the tenant moved in, due to its failure to complete a move-in condition inspection report together with the failure to provide photographs or other sufficient documentary evidence of the property when the tenant moved in. I find that the landlord only provided photographs of the condition when the tenant moved out and the tenant disputed them saying that the damage was there when she moved in. I also find that the landlord failed to show damage beyond reasonable wear and tear. I find that the tenant provided documentary and testimonial evidence that she cleaned the rental unit

prior to vacating and she performed landscaping the day she vacated. The tenant also provided an email on October 2, 2015, stating that she returned all the keys to the rental unit to the landlord.

Accordingly, I dismiss the landlord's claims of \$600.00 for damages to the bathrooms and \$2,489.55 for general damages to the rental unit and landscaping, without leave to reapply. I find that the landlord failed to meet part 2 of the above test to show that the tenant caused the damages, including but not limited to damages to appliances, doors, cabinets, walls, locks, the fireplace, debris and a failure to complete landscaping.

The landlord continues to hold the tenant's security deposit of \$1,350.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$1,350.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was only partially successful in this Application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the Application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,541.27 against the tenant. The landlord is provided with a monetary order in the amount of \$1,541.27 in the above terms and 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. The remainder of the landlord's Application is dismissed without leave to reapply.

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: May 2, 2016

Residential Tenancy Branch