



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNSD, MNR, MND, MNDC

Introduction

This hearing was reconvened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on November 25, 2015 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on December 27, 2015 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. A Monetary Order for damage to the unit - Section 67;
5. An Order to retain the security deposit - Section 38; and
6. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions. As was previously confirmed the tenancy ended and the Landlord requires no order of possession.

Issue(s) to be Decided

Is the Tenant entitled to compensation?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to costs to repair damage to the unit?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on October 1, 2015 and ended on December 15, 2016. Rent of \$800.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit and \$300.00 as a pet deposit. The

Parties mutually conducted a move-in condition inspection. The Tenant provided its forwarding address on December 16, 2015. On November 15, 2015 the Landlord gave the Tenant a one month notice to end tenancy for cause with an effective date of December 31, 2015.

The Landlord states that the Tenant only paid half the rent for December 2015 and claims the remaining amount of \$400.00. The Tenant states that since the Landlord gave the Tenant one month to end the tenancy and since the notice was given on November 15, 2015 the Tenant calculated that this month would end of December 15, 2015 and made arrangements to be moved out on that date. The Tenant states that the Landlord is not entitled to any more rent for December 2015.

The Tenant states that he was unfairly treated by the Landlords and that the Landlord therefore owes the Tenant moving costs. The Tenant claims \$536.05 in costs.

The Landlord states that the Tenant was given 3 offers to conduct a move-in inspection but cannot recall details of those offers. The Landlord states that the Tenant was seen in person at the unit on December 16 or 17, 2015 and was asked if he wanted to inspect the unit. The Landlord states that the Tenant agreed to do the inspection but the Tenant went to the side door of the unit and then refused to enter. The Landlord states that because of this and because the Tenant made her nervous the Landlord did not carry out the inspection. The Landlord states that the Tenant was told to call the Landlord for an inspection the next day. The Landlord states that she does not recall the Tenant's response but thinks it was something rude. The Landlord thinks that she did an inspection or maybe she didn't complete an inspection report. The Landlord states that she took photos of the unit.

The Tenant states that the Landlord was informed on December 15, 2015 that the Tenant has finished moving out and was ready for an inspection. The Tenant states that the Landlord was not ready at the time and asked to conduct the inspection after a couple of hours. The Tenant states that the Landlord did show up a few hours later without any forms and then told the Tenant that the inspection could not take place.

The Landlord states that the Tenant left the unit with lots of damages but that the Landlord never made any repairs for those damages. The Landlord claims \$1,414.29 as costs for the damages.

Analysis

Section 36 of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer at least 2 opportunities for inspection.

The Landlord's evidence surrounding the move-out condition report is vague and tentative and does not provide sufficient clarity around how many offers of an inspection was made. The Tenant's evidence is fairly straightforward and clear that the Landlord offered a first opportunity for inspection later in the day on December 15, 2015. Since there is no clear evidence of the offer of a second opportunity I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-out. However the Landlord still retains the right to claim against the security deposit for other items such as unpaid rent, unless that claim is baseless.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the landlord or tenant must compensate the other for damage or loss that results.

As the tenancy agreement provides that rent is payable in advance on the first day of each month for that month, and as the Tenant only paid half the rent for December 2015, I find that the Landlord has substantiated an entitlement to **\$400.00**. As the Landlord did not make any repairs for any damages claimed I find that the Landlord has failed to substantiate any costs and I dismiss the claim for costs to repair damages to the unit. As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$450.00**. Deducting the Landlord's entitlement from the combined security and pet deposit of **\$700.00** plus zero interest leaves **\$250.00** to be returned to the Tenant forthwith.

As the Tenant had an opportunity to dispute the notice to end tenancy and as there is nothing in the tenancy agreement or Act that stops the Landlord from giving the Tenant a notice to end tenancy I find that the Tenant has not substantiated that the Landlord has breached anything. I therefore find that the Tenant is not entitled to any costs for the tenancy ending when it did and I dismiss the Tenant's claim for moving costs. As the Tenant's application has not been successful I decline to award recovery of the filing fee and in effect the Tenant's application is dismissed.

Conclusion

I Order the Landlord to retain \$450.00 from the security and pet deposit plus interest of \$700.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$250.00**. If necessary, 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: June 27, 2016

Residential Tenancy Branch