Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1811 ADANAC STREET LTD. C/O GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended the hearing and the tenant confirmed he received the Application for Dispute Resolution by registered mail. However, he said he did not get the landlord's evidence until August 22, 2016 and did not have opportunity to respond. He was also on vacation. I find that the tenant is served with the Application according to section 89 of the Act. I find the Residential Tenancy Branch Rules of Procedure 3.14 provide that evidence not submitted with the Application must be received by the respondent not less than 14 days before the hearing. As this hearing occurred on September 9, 2016, I find the landlord provided evidence to the respondent within the 14 days provided under Rule 3.14 and the evidence will be considered in the hearing.

The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) An order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
b) To retain the security deposit to offset the amount owing; and
c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced November 1, 2015 on a fixed term lease to October 31, 2016, that monthly rent was $1924 including parking and a security deposit of $949.50 was paid in October 2015. It is undisputed that the tenant gave Notice to End his tenancy on March 4, 2015 and vacated on March 29, 2016. The landlord provided evidence of diligently advertising the apartment in order to mitigate his losses but they were unable to rent it until a resident tenant decided he would like to rent it for May 1, 2016.

The landlord claims as follows:

$1899: loss of rent for April 2016 due to the breach of the fixed term lease
$210 for cleaning; receipt provided
$40 for carpet cleaning performed by in staff with a professional cleaning machine
$200 liquidated damages for breach of the lease and administrative costs incurred.

The landlord said he spent thousands to renovate the unit and this was the first or second tenancy so the unit was in good condition. The tenant said it was not professionally cleaned when he moved in, the stove did not work for one month, and in January, a water leak occurred in the ceiling so there was a 2ft by 2ft hole in the ceiling for one month. I explained to the tenant that this was not his Application but I asked the landlord if he was prepared to make any allowances to the tenant or respond to the allegations. The landlord said it was a brand new stove under warranty, only the oven did not work and he constantly telephoned the manufacturer and service people to honour their warranty. In desperation, he bought a new stove for the tenant and the manager himself finally came out and fixed the original stove. In respect to the leak, he said he put a new roof on and there was a leak. He did all he could to get it repaired and ceiling repairs as soon as possible. While he acted immediately and did not neglect any of the tenant's concerns, the landlord said he was willing to allow a deduction of $200 off any monetary amount awarded to him for inconvenience to the tenant.

The tenant disputed that the unit was not rented until May 1, 2016 as he said he had a call from an internet provider wanting him to remove his account as someone wanted to hook up in the unit on April 1, 2016. The landlord said he could not believe this as there are cable connections in the units already and no one rented that unit until May 1, 2016.

The landlord provided photographs, condition inspection reports and statements to support his claim. The tenant provided no documents to dispute the claim but said he wanted to claim his security deposit. I explained section 38 of the Act to him and said the landlord had submitted his Application on April 5, 2016 in time to claim against it.

The tenant and a witness for the landlord were prepared to continue argument but I declined to hear anything further as they were repeating their positions which they had already explained and it was irrelevant to the issue of damages. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the tenant violated the Act and his tenancy agreement by breaking his fixed term tenancy which did not end until October 31, 2016. I find the landlord mitigated his damages by diligently advertising the unit and he managed to re-rent for May 1, 2016. I find the landlord entitled to $1899 (excluding parking) as claimed for rental loss in April 2016. I find the landlord's evidence more credible than the tenant's as it was supported by records of advertising many times in April whereas the tenant provided no evidence of an earlier rental other than an alleged call from an internet or cable provider.

In respect to the damages claimed, the onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that there were damages. I find the unit required cleaning according to the evidence of the landlord and the manager. Section 37 of the Act provides that a tenant must leave the unit clean when vacating, whether or not it was clean at move-in, and this obligation is set out in clause 35 of the lease he signed. I find the tenant did not submit that he had cleaned the unit or provide any invoices but he stated it was dirty at move-in. However, I find no deficiencies are noted on the condition inspection report at move-in. I find the landlord entitled to recover cleaning fees of $210 as invoiced.

I find the landlord also entitled to recover $40 for carpet cleaning which was done by staff with a professional machine. According to the Residential Tenancy Guidelines, a tenant is normally responsible to have the carpets professionally cleaned at move out and this was also a provision of clause 35 of the lease. In clause 4 of the lease, it is stated that liquidated damages of $200 is payable to the landlord upon breach of the fixed term lease to cover administrative costs and not as a penalty. It is undisputed that the tenant breached the fixed term lease by vacating before the end of the fixed term. Therefore I find the landlord entitled to recover $200 of liquidated damages.

I find the amount of damages and costs is supported by statements, photographs and some invoices. Although the tenant disputed the claim, I find the weight of the evidence is that the landlord is entitled to recover his costs as claimed.

Although this was not a claim of the tenant, I heard some of his complaints against the landlord such as his stove not working for a time and the ceiling leaking. However, I found the weight of the evidence is that the landlord acted diligently to correct the problems as soon as they were

reported. I find insufficient evidence to support the tenant's claim of mould in the unit. I find the unit was renovated recently and the landlord's photographs show it to be in very good condition. The evidence does not show old windowsills or build up of mould. I find the landlord did not, through act or neglect, cause these problems for the tenant. However, in a spirit of generosity, not because any fault was shown, the landlord offered to reduce the claim against the tenant by $200 although he was not responsible for any of the issues suffered by the tenant and acted immediately to correct them.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental loss due to breach of term	1899.00
Cleaning and carpet cleaning	250.00
Liquidated damages per. Lease	200.00
Filing fee	100.00
Less security deposit (no interest 2015-16)	-949.50
Less landlord's voluntary deduction	-200.00
Total Monetary Order to landlord	**1299.50**

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: September 09, 2016

Residential Tenancy Branch