



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and one of the tenants.

I note the landlord's original Application for Dispute Resolution, submitted on January 29, 2016 sought compensation only for unpaid rent and utilities. I also note that on August 31, 2016 she submitted an Amendment to an Application for Dispute Resolution seeking additional compensation for damage to the rental unit and increased her total claim amount from \$3,033.00 to \$5,509.84.

During the hearing I noted that the Condition Inspection Report submitted by the landlord as part of her evidence did not include the results of the Inspection completed by the parties in March 2016. I confirmed that the tenant did have a copy of the completed Report and I ordered the landlord to submit the completed report by fax.

The landlord submitted the Report by the end of business on September 15, 2016.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; lost revenue; and utilities; for compensation for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on September 3, 2015 for a 6 month fixed term tenancy beginning on October 1, 2015 for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 and a pet damage deposit of \$700.00 paid.

The parties agreed that in November 2015 the tenants informed the landlord that they had purchased a house and were moving out of the rental unit by the end of December 2015. The parties agreed that the tenants offered to find someone to either rent the property or take over the tenancy agreement until the end of the fixed term. The tenants moved out of the rental unit by December 31, 2016.

The parties agreed, at first, the tenants stated that they would pay rent until the end of the fixed term but that they later only paid for January 2016. The landlord seeks lost revenue for the months of February and March 2016 in the amount of \$2,800.00. The landlord also seeks \$35.00 for gas utility for the period January 19 to 31, 2016 and \$99.00 for each of the months of February and March 2016 for a total of \$233.00 for utilities.

The parties agree the move out condition inspection was completed on March 6, 2016. The landlord seeks compensation for specific damage to the rental unit. She submitted the floor in the living area of the unit was damaged and provided photographic evidence to show several areas where the flooring had been significantly scratched.

The landlord submitted she has to replace the flooring and has provided a quote of \$5,869.47. However, the landlord stated the flooring was 6 years old and in consideration of a 10 year life span she has claimed a pro-rated amount of \$2,344.00.

The landlord submitted photos of damaged light switch mains and electrical plug covers. The landlord has provided a receipt totalling \$16.44 and one in the amount of \$5.56 for these items but has only claimed \$7.94. The landlord seeks \$25.00 for an electrician to install the light switch mains but did not provide a receipt.

The landlord also seeks compensation in the amount of \$99.90 for the purchase of 5 glass light shades for fixtures broken in the bathroom. The landlord has provided receipts.

The tenant submitted that she did not recall any damage to the light fixtures or plugs. She stated she wasn't even sure how a person could do the damage to the light switches. She also stated that she did know how the floor was scratched.

As to the broken shades the tenant submitted that she did not recall seeing them broken when she moved. She stated that the landlord's mother had painted the bathroom sometime between the time they moved out of the rental unit at the end of December 2015 and the time of the condition inspection in March 2016.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As there is no evidence before me that the tenants ever found the landlord in breach of a material term of the tenancy agreement, I find the earliest the tenants could have ended their tenancy was March 30, 2016 to comply with their obligations under Section 45(2).

As a result I find the tenants are responsible for the payment of rent for the duration of the fixed term tenancy subject only the landlord's obligation to mitigate their damages or losses.

Section 7 of the *Act* states if a party to a tenancy does not comply with the *Act*, regulations or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results.

The section goes on to state that the party who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the landlord's decision to not allow the tenants to assist her in finding new tenants and her own failure to even attempt to find any new tenants until March 2016 confirms that the landlord took no steps at all to mitigate these losses. As such, I dismiss the landlord's claim for lost revenue.

In regard to the landlord's claim for utilities and despite my finding above that the tenants were obligated to pay rent until the end of the fixed term, I find the tenants are only responsible, during a tenancy, for the amount of the utility they have consumed during the tenancy.

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

In the case before me I find the tenancy ended when the tenants vacated the rental unit on December 31, 2015, pursuant to Section 44(1)(d). As a result, I find the tenants are not responsible for the payment of utilities beyond December 31, 2015. I dismiss this portion of the landlord's claim.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

From the landlord's evidence including the Condition Inspection Report and the photographs submitted, I find the landlord has established, on a balance of probabilities, that the rental unit was damaged as described during the tenancy with one exception.

I find that since the landlord's mother painted the bathroom during the period between when the tenants vacated the rental unit and the date of the move out inspection I cannot find with any certainty that the damage caused to the light shades occurred during the tenancy.

As a result, I dismiss the portion of the landlord's claim for replacement lampshades but order that she is entitled to compensation for replacement flooring; switch covers and switch mains and installation.

I find the landlord has established the value of the electrical materials by way of her receipts. I am satisfied the landlord has established the value of the flooring repairs and that she has provided an appropriate adjustment for the age of the flooring and estimate of the cost for an electrician to install the electrical components.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,426.94** comprised of \$32.94 for electrical supplies and installation; \$2,344.00 flooring replacement; and \$50.00 of \$100.00 fee paid by the landlord for this application as she was only partially successful.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of \$1,400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,026.94**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 16, 2016

Residential Tenancy Branch