



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damage to the unit - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Did the Landlord taken any steps to mitigate the claim for cleaning costs?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started on June 6, 2013 and ended on July 5, 2016. Rent of \$1,400.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. No move-in condition inspection and report was completed. The Parties mutually conducted a move-out inspection and completed a report. The Landlord returned the security deposit in full to the Tenant. At move-out the Tenant was not finished cleaning the unit however the Landlord asked the Tenant to leave without finishing the cleaning as the Landlord wanted immediate possession of the unit.

The Landlord states that the Tenant left the unit unclean and claims \$190.00. The Landlord states that the self-cleaning oven was left unclean, a bathroom was left unclean, tape residue was left on the hardwood floor and a carpet was not cleaned. The Landlord states that he hired a company to clean the unit and it actually cost \$239.24. No invoice was provided. The Tenant states that he had set the oven to clean but could not finish the cleaning as the Landlord wanted the Tenant out of the unit without finishing the cleaning so the Tenant complied and left.

The Landlord states that in April 2016 he offered the Tenant a mutual agreement to end the tenancy for July 1, 2016 along with no rent payable for June 2016. The Landlord states that the Tenant turned the offer down. The Landlord states that on May 31, 2016 the Tenant gave a one month notice to end the tenancy for July 1, 2016. The Landlord states that on June 5, 2016 the Tenant forwarded the signed mutual agreement to end the tenancy. The Landlord states that he accepted the mutual agreement to end the tenancy but it was accepted later than when offered. The Landlord states that when the Tenant initially declined the Landlord did not withdraw the offer for no June 2016 rent. The Landlord states that his intention was to end the tenancy before the unit sold and that the Landlord's family was to occupy the unit for July 2016. The Landlord claims unpaid rent for June 2016.

The Tenant states that in April 2016 he could not sign the mutual agreement to end the tenancy because there was no place to go. The Tenant states that once he secured a place to move to he agreed to end the tenancy when and as offered by the Landlord. The Tenant denies that he owes any rent for June 2016.

Analysis

Section 44 of the Act provides that a tenancy ends, inter alia, if the landlord and tenant agree in writing to end the tenancy. Given the signed mutual agreement I find that the tenancy was to end on July 1, 2016. Based on the undisputed evidence that the Landlord verbally offered no rent for June if the Tenant signed the agreement to end the tenancy for July 1, 2016 and given that the Tenant signed the agreement to end for that date, albeit late, I find that the Tenant is not obliged to pay rent for June 2016. I therefore dismiss this claim.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results.

This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Although the Tenant did not leave the unit completely clean, given the undisputed evidence that the Landlord required the Tenant's departure without allowing the Tenant time to finish the cleaning I find that the Landlord failed to mitigate the damages that flowed from the Tenant's breach and I therefore dismiss the claim for cleaning. As none of the Landlord's claims have been successful I dismiss the claim for recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The Landlord's application is dismissed. 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: January 11, 2017

Residential Tenancy Branch