



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, MND, FF

Introduction

This hearing was convened 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 17, 2016 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on November 24, 2017 for:

1. An Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damages to the unit - Section 67; and
4. 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.

Preliminary Matter

During the hearing the Tenant stated that she did not receive anything from the Landlord about its application until this hearing. The Landlord states that its application was sent to the Tenant by registered mail and that the tracking information indicated that the Tenant failed to pick up the materials. The Landlord’s application and evidence materials were described to the Tenant and the Tenant was asked how or whether the

Tenant wished to proceed. The Tenant stated that she was satisfied with continuing with the hearing on both applications.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on March 6, 2016. The Tenants moved out on October 31, 2016. Rent of \$1,000.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenants. No opportunity to conduct a move-out inspection was offered to the Tenant by the Landlord who conducted an inspection alone on November 1, 2016. The Landlord received the Tenant's forwarding address on November 8, 2016 and returned the full security deposit by registered mail on November 17, 2017.

The Landlord states that the Tenant only gave notice to end the tenancy by text and that the Landlord was therefore not sure that the Tenant ended the tenancy. The Landlord states that the unit was advertised online by mid-September 2016 for a November 1, 2016 occupancy date. The Landlord states that although there were interested tenants for November 1, 2016 these tenants were either not accepted by the Landlord or the tenants did not take up the tenancy. The Landlord states that on November 10, 2017 the advertised rental rate was increased to \$1,150.00 and that a new tenancy was found for November 27, 2017. The Landlord argues that by failing to provide written notice the Landlord was not certain that the tenancy was going to end, that the tenancy was not ended and that the Tenants are therefore responsible for unpaid rent or lost rental income for November 2016. The Landlord claims \$1,000.00.

The Landlord states that the Tenants failed to leave the unit clean and claims \$300.00 for its own labour at an hourly rate of \$75.00 per hour. The Landlord states that he did not check the hourly charges of other cleaning services. The Landlord provided photos of the unit. The Tenant states that the unit was completely cleaned and provided photos. The Witness for the Tenant states that she was present at move-out and for some of the cleaning and states that the unit was left clean including the window tracks, oven, floors and light fixtures.

The Landlord states that the Tenants failed to leave the walls undamaged and claims \$73.30 for the cost of paint for the walls. The Landlord states that the Tenant left the walls with patches over what could have been picture nails. The Tenant states that the nail holes were from picture hanging nails and that they were all patched. The Tenant states that prior to the end of the tenancy the Landlord was asked about whether they wanted the wall painted and the Landlord told them not to paint. The Tenant provides text messages of this conversation.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord sent the full security deposit to the Tenant by registered mail on November 17, 2017 and as registered mail is deemed to be received within 5 days, I find that the Tenant received the security deposit within 15 days of the Landlord receiving the Tenant's forwarding address. The Tenant is therefore not entitled to return of double the security deposit and I dismiss this claim. As this was the only claim in the application and as the application was made before 15 days had passed from the date that the forwarding address was provided I find that the Tenant made its application too early and is therefore not entitled to recovery of the filing fee. In effect the Tenant's application is dismissed in its entirety.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. 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. Given the Tenant photos and Witness evidence and considering that the Landlord's photos show only minor misses, I find that that the Landlord has failed to show on a balance of probabilities that the unit was not left reasonably clean. I further consider the time and hourly amount and time claimed for the minor misses to be greatly inflated. As a result I dismiss the claim for cleaning costs.

Accepting the evidence that the patched areas on the walls were from picture hanging nails, and considering that walls can be reasonably considered to be used for hanging pictures with such appropriated nails I find that these holes were only reasonable wear and tear. For this reason and because the texts from the Landlord indicate that the Tenants were not required to paint the unit, I find that the Landlord has failed to substantiate that the Tenant breached the Act or tenancy agreement. I therefore dismiss the claim for the cost of paint.

Although the Landlord argues that the failure of the Tenant to provide its notice to end tenancy in writing as opposed to the texted notice caused the rental loss, I consider that the Landlord acted on the texted notice to advertise the unit. As a result I cannot find that the Tenant caused the lost rental income solely because a different format was used to relay the end of the tenancy. There is no evidence of correlation between the use of the text and the inability to obtain a new tenant. Further as the Landlord increased the rent for the next tenancy I find that the Landlord failed to take reasonable steps to mitigate the loss claimed and I dismiss the claim for lost rental income. As

none of the Landlord's claims have been successful I decline to award recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Conclusion

The application of each Party 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: May 19, 2017

Residential Tenancy Branch