



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

On November 8, 2016, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for loss of rent; for damage and cleaning of the rental unit; to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee for the Application. On May 19, 2017, the Landlord amended the Application to add a related claim and to reduce the amount claimed for rent.

The matter was set for a conference call hearing. The Landlord's agent ("the Landlord") and the Tenant attended the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony. The Tenant testified that she received a copy of the Landlord's documentary evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The initial hearing on May 10, 2017, was adjourned due to my concerns regarding service and disclosure of the Landlord's evidence. The Tenant stated she wanted an opportunity to consider and respond to the Landlord's evidence. The Landlord was ordered to re-serve the documentary evidence to the Tenant.

At the start of the adjourned hearing, the Tenant testified that she received the Landlord's documentary evidence.

The Tenant provided the Residential Tenancy Branch with 10 pages of documentary evidence on April 27, 2017. The Tenant testified that she never served a copy of her evidence to the Landlord. The Landlord does not have the Tenants evidence and has not had an opportunity to review or consider the Tenant's evidence.

The Tenant did not submit any additional evidence after the Landlord re-served his evidence following the May 10, 2017, hearing.

I find that the Tenant's evidence was not received by the Landlord, and it would be unfair to consider evidence that the Landlord has not seen in this hearing. I find that the Tenant had an opportunity to submit evidence after receiving the Landlord's evidence.

The Tenant did not request an adjournment to serve her documents on the Landlord, and in the circumstances, I find that it would be prejudicial to the Landlord to adjourn the hearing again. The Tenant's 10 pages of evidence is excluded from the hearing and will not be considered.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage and cleaning?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on July 1, 2016, as a one year fixed term tenancy. Rent in the amount of \$3,000.00 was to be paid to the Landlord on the first day of each month. The Tenant paid the Landlord a security deposit of \$1,500.00. The Landlord provided a copy of the tenancy agreement. The agreement indicates that the Tenant must vacate the rental unit at the end of the tenancy.

The Parties testified that the Tenant moved out of the rental unit at the end of October 2016.

Landlord's Claims

Liquidated Damages \$625.00

The Landlord testified that the tenancy agreement has a liquidated damages clause that requires the Tenants to pay \$625.00 as liquidated damages for the Landlords costs of re-renting the rental unit, if the Tenant ends the fixed term tenancy early.

The Tenant acknowledged that she entered into the tenancy agreement with the Landlord.

Carpet Cleaning \$386.40

The Landlord testified that the Tenant left the carpets dirty at the end of the tenancy. The Landlord testified that the rental unit is fully carpeted. The Landlord testified that the carpets were clean at the start of the tenancy.

The Landlord testified that the parties participated in a move in inspection at the start of the tenancy, and the tenant signed the condition inspection report. The Landlord testified that the Tenant did not attend the move out inspection.

The Landlord provided a copy of a receipt in the amount of \$386.40 dated November 15, 2016, for cleaning of the carpet.

In response, the Tenant testified that the carpets were not clean at the start of the tenancy. She testified that she rented a carpet cleaner machine and cleaned the carpets. The Tenant submitted that the condition inspection report indicates the carpets had stains at the start of the tenancy.

Cleaning \$500.00

The Landlord testified that the Tenant left rental unit quickly and left the unit dirty. He submitted that the Tenant did not attend the move out inspection. The Landlord testified that he had to hire cleaners to clean the rental unit after the Tenant moved out. He testified that the unit was cleaned on November 7, 2016, at \$40.00 per hour.

The Landlord provided a document from the cleaners that detail the cleaning that was completed. The document indicates the Kitchen; Livingroom; Dining room; laundry room; bathrooms; and bedrooms were cleaned.

The Landlord provided a copy of a condition inspection report that indicates the parties conducted a move in inspection on June 30, 2016. The Landlord provided copies of text messages between the parties where the Landlord was trying to arrange a move out inspection.

The Landlord provided a copy of a receipt dated November 7, 2016, for professional cleaning of the rental unit in the amount of \$500.00.

The Tenant testified that she spent 14 hours cleaning the rental unit. She testified that she could not attend the move out inspection, as she was working. She testified that she was not available until 9:30 pm.

The Landlord responded that the Tenant did not respond to the proposed dates for an inspection. The Landlord referred to his documentary evidence of text messages between the parties in support of his testimony.

Loss of Rent \$9,000.00

The parties agreed that the Tenant moved out of the rental unit at the end of October 2016.

The Landlord testified that he suffered a loss of rent for the months of November 2016, December 2016, and January 2017.

The Landlord testified that he immediately attempted to re-rent the unit by advertising on a number of local websites as soon as he became aware that the Tenant had vacated the unit. The Landlord testified that it is difficult to rent a property in the winter months.

The Landlord testified that the rental unit was advertised for the same amount of rent as the Tenant paid. The Landlord testified that he could not find a new tenant for December and January.

The Landlord had a witness, Ms. K.C. provide testimony. Ms. K.C. testified that she posted advertisements on local websites for the rental property sometime in late October or early November 2016.

The Landlord provided a rent statement document that shows the rent was not paid from November 2016, onwards.

The Landlord testified that a company responded to his advertisement, and negotiated the terms of the tenancy agreement. The Landlord testified that he rented the unit to the new occupant on February 1, 2017.

The Landlord explained that the monthly rent for the new occupant is \$3,500.00 per month, which is higher than the rent the Tenant was paying because the rent includes utilities, cable and internet. He testified that the tenancy agreement with the Tenant did not include utilities, cable and internet.

The Landlord provided a copy of the tenancy agreement for the new occupant. The Tenancy agreement is for a fixed term starting on February 1, 2017, and ending on July 3, 2017. The agreement indicates that rent in the amount of \$3,500.00 is due each month.

In response, the Tenant testified that she moved out of the rental unit due to receiving a 1 Month Notice to End Tenancy from the Landlord. She testified that she dropped off the keys to the unit at the end of October 2016.

Maintenance \$606.22

The Landlord testified that the Tenant is responsible for damage to the rental unit. He testified that bulbs needed to be purchased and two lights were broken. The Landlord testified that cost for the lights and covers was \$217.35. The Landlord testified that the remaining cost was for patching and painting of scrapes, scuffs, dings, and nail holes on the walls. The Landlord submitted that a maintenance company was hired to complete the repairs.

The Landlord provided two photographs showing broken light fixtures.

The Landlord provided a copy of an invoice dated November 15, 2016, for maintenance and repairs to the rental unit in the amount of \$606.22. The invoice indicates that bulbs and a broken light fixture was replaced. The invoice indicates that the unit was patched and painted throughout.

In response, the Tenant testified that she repainted the master bedroom and a bathroom during the tenancy. She acknowledged responsibility for damaging one of the light fixtures.

The Tenant testified that the damage to the walls was already present when she moved into the unit. The Tenant referred to the condition inspection report in support of her testimony.

Security Deposit \$1,500.00

The Landlord applied for dispute resolution on November 8, 2016. I find that the Landlord's application to retain the security deposit was made in compliance with timeframes contained within section 38 of the Act.

The Landlord is seeking to retain the security deposit in partial satisfaction of the claim for the loss of rent.

Analysis

Section 7 of the Act states that a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations, or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

Liquidated Damages \$625.00

I find that the tenancy agreement contains a term regarding liquidated damages if the tenancy is ended early. I find that the Tenant moved out of the rental unit at the end of October 2016. Regardless of whether the tenancy ended due to the issuance of a notice to end tenancy or not, the Tenant is still responsible to meet the terms of the fixed term tenancy agreement.

The Tenancy ended early when the Tenant moved out and I find that Landlord is entitled to claim the liquidated damages amount of \$625.00.

The Landlord is granted the amount of \$625.00.

Carpet Cleaning \$386.40

I find that the tenancy agreement has a clause regarding carpets. The agreement indicates that if the carpets are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy.

I find that the parties participated in a move in inspection on June 30, 2016. I accept the condition inspection report is reliable evidence of the condition of the rental unit at the start of the tenancy.

The condition inspection report indicates there were minor stains on the entry halls and stairs floor or carpet. The report also indicates that the den had minor stains on the floor or carpet.

I accept the Tenant's testimony that the carpets were not clean at the start of the tenancy. Since the Tenancy was for a period of less than one year in duration, and the carpets were not clean at the start of the tenancy, the Landlord's claim for the cost of cleaning the carpets at the end of the tenancy is dismissed.

Cleaning \$500.00

I have accepted the condition inspection report to be reliable evidence of the condition of the rental unit at the start of the tenancy. I find that the condition inspection report indicates that aside from chips, scuffs and patches on walls, the rental unit was clean.

I accept the Landlords testimony that the Tenant failed to attend the move out inspection. I accept the Landlord's testimony that the tenant left quickly and the rental unit was dirty and he needed to hire cleaners to clean the rental unit. The Tenant did not provide any evidence in support of her testimony that she cleaned the rental unit. I find that the Landlord has provided the stronger evidence that the rental unit was left unclean.

I award the Landlord the amount of \$500.00 for cleaning the rental unit.

Loss of Rent \$9,000.00

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.

I find that the Tenant ended the fixed term tenancy early and is responsible to pay the rent until the property could be re-rented. I do not accept the Tenant's suggestion that because she moved out due to receiving a notice to end tenancy, she is not obligated to meet the terms of the fixed term tenancy agreement. I find it is not reasonable to accept that Tenants could divest themselves of a contractual obligation to pay rent for a fixed term by operation of an eviction. Further to this, the Landlord testified that he rescinded the eviction notice.

I find that the Landlord complied with his duty to mitigate the loss by attempting to re-rent the property as soon as the Tenant moved out. I accept the Landlord's testimony that he attempted to re-rent the unit at the same amount of rent.

While I acknowledge that the Landlord was able to re-rent the property at a higher rent, I do not find it reasonable to set-off the higher amount of rent towards the claim for unpaid rent against the Tenant. The new tenancy agreement obligates the Landlord to pay for utilities, cable and

internet; therefore, I find that the Landlord did not benefit from renting the property out at a higher rent.

I award the Landlord the amount of \$9,000.00 for the loss of rent that the Landlord suffered for the months of November, 2016, December 2016, and January 2017.

Maintenance \$606.22

I have accepted the condition inspection report to be reliable evidence of the condition of the rental unit at the start of the tenancy. I find that the condition inspection report indicates that there were chips, scuffs, nail holes, screws and patches on the walls at the start of the tenancy.

I find that there was pre-existing damage to the rental unit when the Tenant moved in. The Landlord's claim to recover the cost of patching and painting the rental unit is dismissed.

The Tenant acknowledged breaking a light fixture. The Landlord's claim of \$217.35 for the cost of light bulbs and a light cover is granted.

I award the Landlord the amount of \$217.35.

Security Deposit \$1,500.00

I order that the Landlord can keep the security deposit in the amount of \$1,500.00 in partial satisfaction of the claim for unpaid rent.

Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Monetary Award

I find that the Landlord has established a total monetary claim of \$10,442.35 comprised of unpaid rent; liquidated damages, cleaning, damage and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$1,500.00 towards the claim of \$10,442.35, I find that the Landlord is entitled to a monetary order in the amount of \$8,942.35. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant entered into a fixed term tenancy agreement and is responsible to pay the rent owing under the agreement for the 3 month period of time that she did not pay the rent while Landlord attempted to re-rent the property.

The Landlord was successful in his claims for loss of rent, liquidated damages, cleaning costs, and some damage.

I order that the Landlord can keep the security deposit in the amount of \$1,500.00 in partial satisfaction of the Landlords awards.

The Landlord is granted a monetary order in the amount of 8,942.35.

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: July 13, 2017

Residential Tenancy Branch