



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 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; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and the Tenant's Agent 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 the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on November 1, 2016 for a fixed term to end on May 31, 2017. On February 3, 2016b the Tenant gave notice to move out of the unit and did so on February 28, 2017. Rent of \$1,800.00 was payable on the first day of each month and at the outset of the tenancy the Landlord collected \$900.00 as a security deposit. The Landlord received the Tenant's forwarding address on February 28, 2017 when the Parties mutually conducted a move-out inspection. The Tenant did not agree with the move-out condition report.

The Landlord states that the unit was purchased by the Landlord after the tenancy started and that the Landlord has no knowledge of a move-in inspection or report.

The Landlord withdraws the claim for damage to a door lock.

The Landlord states that the unit was filled with a one month tenant on March 6, 2017 for one month to April 6, 2017 and that the Landlord obtained rent of \$2,000.00 for this period. The Landlord states that the unit was then filled with another tenant from April 16, 2017 for a six month period with monthly rent of \$2,000.00. The Landlord claims lost rental income for the period that the unit was empty: March 1 to 5, 2017 and April 6 to 16, 2017. The Landlord claims \$900.00 calculated as a prorated amount of the rent that was payable. The Landlord states that the unit was advertised on various online sites for \$2,000.00 per month. The Tenant provided submissions of advertisements of the unit seeking rental amounts of \$2,000.00 and \$2,100.00.

The Landlord states that it always uses a professional to carry out the rental and advertising of the property as the Landlord is too busy and this is how the Landlord operates his business. The Landlord claims these professional costs to advertise and re-rent the unit that were incurred to May 31, 2017 in the total amount of \$525.00. There is nothing in the tenancy agreement that provides for re-rental costs. The Agent argues that these costs are the costs of doing business and are absorbed by the Landlord as business costs. The Agent argues that the Tenant is not obliged to pay such costs of doing business.

The Landlord states that the Tenant left the unit unclean and claims \$102.50 as the cleaning costs. A receipt dated March 2, 2017 was provided for this claim. The Landlord states that after the next tenant moved out on April 6, 2017 the unit was left unclean and so the Landlord claims the cleaning costs from this tenancy in the amount of \$155.00 against the Tenant. The Landlord states that the agreement with the next

tenant provided that no cleaning was required at the end of its tenancy. The Landlord argues that since the Tenant broke the lease the Tenant is responsible for its cleanliness until the end of the fixed term. The Agent states that the Tenant left the unit clean. The Tenant provides a video of the unit taken at move-out.

The Landlord claims the costs of registered mail.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Given the video of the unit I find on a balance of probabilities that the Landlord has not substantiated that the Tenant left the unit unclean at the end of February 2017 and I dismiss this claim. As the Tenant is not responsible for damage from someone else's tenancy I dismiss the claim for cleaning costs of the next tenant.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Based on the Landlord's evidence of advertising the unit at a greater amount of rent from February 2017 onward than the rent being paid by the Tenant I find that the Landlord failed to take reasonable steps to mitigate the loss of rent being claimed against the Tenant. I therefore dismiss these claims.

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. Nothing in the Act provides that a tenant is responsible for the landlord's costs of carrying out a rental business or obligations under the Act to mitigate losses being claimed. There is nothing in the tenancy agreement that makes the

Tenant responsible for costs of re-rentals should the tenancy end early. I therefore dismiss the claim for the re-rental costs.

Nothing in the Act provides for the recovery of the costs of the dispute proceedings other than the filing fee. I therefore dismiss the claim for service costs.

As none of the Landlord's claims have been successful I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety. I order the Landlord to return the security deposit of **\$900.00** plus zero interest to the Tenant forthwith.

Conclusion

The application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$900.00**. If necessary, this order may be filed in the Small Claims Court and 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: August 18, 2017

Residential Tenancy Branch