



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

The landlord applies for a monetary award for unpaid September 2016 rent, an unpaid water bill, the cost of carpet shampooing and recovery of a charge for removal of junk.

This matter was adjourned from September 20, 2017 to permit the landlord an opportunity to refile photographs and provide the tenant with copies.

The parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the tenant owe rent? Is he responsible for the water bill, the junk removal or carpet cleaning?

Background and Evidence

The rental unit is a four or five bedroom house. The tenancy started in November 2014 for a two year term ending November 30, 2016. The monthly rent was \$3500.00. The tenants paid a \$1750.00 security deposit and a \$1750.00 pet damage deposit.

By January 2015 the parties found themselves in an arbitration hearing; the landlord claiming rent for the tenant's early possession of the rental unit and the tenant seeking a compliance order. The landlord was ordered to provide the tenant with a signed copy of the tenancy agreement.

In July 2016 the tenant gave the landlord a written notice that he was terminating the tenancy and would be gone by October 1, 2017. That was a month before the end of the fixed term.

In early September 2016 the landlord brought a direct request application for an order of possession pursuant to a ten day Notice to End Tenancy for unpaid September rent. By a decision dated September 27 the landlord received an order of possession and a monetary award for unpaid September 2016 rent.

The tenant applied for a review of the decision claiming never to have received either the ten day Notice or the application for dispute resolution by direct request, however, the review application was denied.

On November 10, 2016 the landlord brought another application for dispute resolution, seeking an order of possession and a monetary award for unpaid September rent (again), loss of October and November rent and for cleaning; unpaid utilities; and garbage disposal. Of course, by that time the landlord already had an order of possession and the tenants had vacated the premises. As well, the landlord had already been awarded the September 2016 rent.

At the hearing December 29, 2016 it was apparent the landlord had not shared her documentary evidence with the tenant. She was permitted to withdraw her application with leave to re-apply..

This then, is that reapplication, though the landlord is not claiming for loss of October or November 2016 rent.

The landlord testifies that she attended the premises in early October and determined the tenants had vacated. She did not elaborate on the reasons forming the basis of that conclusion. Later in her testimony she said that the tenants had "disappeared" and that she had sent a contractor to check on the state of the premises. In any event, she ordered a locksmith to change the locks on the home.

The landlord claims the carpets required cleaning. She retained a carpet cleaning service that charged \$178.50 for carpet cleaning and fridge cleaning done October 24, 2016.

The landlord claims \$675.00 for garbage removal services provided on October 21 and 25, 2016. She says the tenants left much furniture and junk in the home. She produces photographs taken October 6, 2016 of what is claimed to have been junk and discarded belongings.

The landlord also claims \$4873.81 for unpaid water bills. Though she has produced a tenancy agreement that indicates that water is included in rent, she argues the landlord never agreed to it. At least two times during this tenancy she sent the tenant a copy of the water bill but he did not pay it.

The tenant Mr. H. tells a different story. He produces photos of junk and debris on the property when he moved in.

He says the landlord changed the locks on the home on September 24, 2016. He went to the house that day in the course of his move-out but could not get in. He contacted the landlord who told him his belongings would be placed in the carport where he could retrieve them.

He says he attended at the house on October 2 to find the landlord's workmen there starting to remove things. He told them he would do it but they argued they'd been hired already. He told them to haul any items to his worksite, the tenant is a builder, five doors down the street.

He produces photos showing him being at the premises with a junk bin loading various belongings of his, including a barbeque and some mattresses.

The tenant disputes the water bill charge and points to the tenancy agreement which states water is included in rent. He says that when he received the water bill from the landlord he emailed her telling her to check the tenancy agreement.

He complains that the home was not clean when he and his wife moved in.

Ms. B., the tenant's wife, testified about the poor condition of the premises at the start of the tenancy. She addressed other issues not directly pertinent to this matter as well, including water usage due to leaks, conversations about work to be done before move-in and the amount of rent the landlord is charging the current tenants of the home.

She denies that she and the tenant "disappeared" in September. The parties had frequently been in touch by email. The landlord had requested on September 22 that she be permitted to show the home. She sent the landlord the tenant's forwarding address in writing by registered mail on October 10, 2016. She says there was no "junk company" removing junk, just a worker.

She complains that the landlord has hired a credit collection agency to pursue collection of the September 2016 rent. The collection agency is harassing them and negatively affecting their creditworthiness.

Analysis

September 2016 Rent

It is apparent that the landlord obtained a monetary award for this rent back in September 2016. Further it is apparent from the decision rendered December 29, 2016 that the landlord was reminded of that fact and of the application of the \$3500.00 of deposit money she held in complete satisfaction of the September 2016 rent award.

She offered no reasonable explanation why the landlord is now, for a third time, seeking the September 2016 rent, nor why the landlord would be sending the non-existent debt to a collection agency.

This portion of the claim is dismissed.

Water Bill

The tenancy agreement states that water is included in rent. I do not accept the landlord's suggestion that the tenancy agreement was somehow changed by the tenant without the landlord's knowledge or consent. The tenancy agreement presented, the agreement that includes water in the rent, was the tenancy agreement the landlord sent to the tenant pursuant to the order made January 21, 2015.

Further, the tenancy agreement that includes water in the rent was the tenancy agreement the landlord herself filed as the tenancy agreement between the parties when the landlord applied for an order of possession by direct request in September 2016.

The landlord cannot now resile from that position and claim the agreement was not the true agreement between the parties.

Water was included in the tenant's rent. The landlord cannot now claim otherwise. The claim for water utility costs is dismissed.

Junk Removal

I find on a balance of probabilities that the landlord changed the locks on the premises in late September 2016 as the tenant testifies and not in October. I find it unusual that the landlord would not add the locksmith bill to the claim. Had that claim been included,

the locksmith's bill would have been submitted and it would show when the locks were changed.

I find it unusual that the tenant would leave his rather elaborate office desk in the house. The reasonable explanation is that he was prevented from entering the home because the locks had been changed.

Additionally, the landlord's photos, submitted to show the "junk" that the landlord had to remove, show items like the barbeque and the mattresses that the tenant and his photos show were actually loaded by him into his bin.

For these reasons I am not persuaded what, if any of the tenant's possessions the landlord needed to remove or that they were not removed because the tenant had been denied access to the premises by the landlord changing locks and thus taking possession of the premises through means other than by lawful enforcement of the order of possession.

I dismiss this item of the claim.

Carpet Cleaning

There is no evidence that the tenants cleaned the carpets before moving out as they would normally have been required to do (see Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises). At the same time, I find that the landlord, by changing locks as she did, prevented the tenants the opportunity to do so. I therefore dismiss this item of the claim.

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: September 27, 2017

Residential Tenancy Branch