



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on May 13, 2017 for:

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

The Tenant applied on May 24, 2017 for:

1. An Order for the return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Are the Landlords entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on November 1, 2016 for a fixed term to end August 31, 2017.

Rent of \$1,100.00 was payable on the first day of each month. At the outset of the

tenancy the Landlord collected \$550.00 as security deposit. On April 7, 2017 the Tenants gave notice to end the tenancy for April 30, 2017. On April 28, 2017 the Tenants moved out of the unit, returned the keys, and provided its forwarding address to the Landlord. The tenancy agreement provides that the Tenants are responsible for mowing and weeding. No move-in or move-out inspection was carried out with the Tenants. The Landlord provided no copy of any condition report.

The Landlord states that as a result of the Tenants insufficient notice the Landlord suffered a month of lost rental income. The Landlord states that the unit was advertised online on April 13, 2017 for rent of \$1,200.00. No tenancy start date was advertised. The Landlord states that they informed prospective tenants who attended the showing on April 23, 2017 that the unit was available for June 1, 2017. The Landlord states that time was also required for the removal the bathtub and shower. The Landlord provides a photo of a dead rodent under some plumbing, submits that the Tenants had complained of a smell, and suggests that the rodent caused the smell. The Tenants submit that they had rodent problems during the tenancy. The Landlord claims \$1,100.00.

The Landlord states that the Tenants left the unit unclean walls, floors, and stove with garbage and that they failed to leave the lawn cut and weeded. The Landlord states that they obtained estimates and then obtained services to complete the work. The Landlord claims a total on \$194.20 for these costs and provides an invoice that sets out costs of \$80.00 for the cost of cleaning oven/stove, walls and floors; \$40.00 for the cost of cleaning the shed and removing garbage; and \$80.00 for the lawn work. The Landlord provides photos of a stove, an exterior window, a portion of a floor, an outdoor area, and the interior of the shed. The Landlord states that the Tenants used the shed for brewing and that the bottle depicted in the shed are brewing bottles. The Landlord states that the tenancy agreement addendum requires that the Tenant's wash the walls at the end of the tenancy and that the Tenants smoked in the unit during the tenancy.

The Tenant states that at the outset of the tenancy the walls were filthy and that the stove and oven were covered with grease. The Tenant states that they had to wash the walls after they moved into the unit. The Tenant states that they left the yard as it was provided to them. The Tenant states that they did not smoke in the unit. The Tenant states that while they did brew in the shed, the bottle and other items left in the shed were not theirs and were there at the outset. The Tenant states that they left the unit in better condition than it was received. The Tenant states that they wiped out the stove with regular cleaning products and washed all the floors. The Tenant states that they did not pull out the appliances but that the floors underneath them had not been clean at move-in as an article had been found underneath one of the appliances. The Tenant states that they were only in the unit for 5 months.

Analysis

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. There is no evidence that the Tenants caused a rat to die under the bathroom and the Landlord has an obligation to provide and maintain a rodent free rental unit. The evidence of repairs due to the rat therefore does not support that the delay in obtaining a renter until June 2017 was due to the fault of the Tenants. Further, as the Landlord advertised the unit for a higher amount of rent I find that the Landlord failed to take reasonable steps to mitigate its losses caused by the Tenant's short notice in ending the tenancy. For these reasons I find that the Landlord has not substantiated that the Tenant's breach of the tenancy agreement caused the rental loss claimed and I dismiss this claim.

Section 37(2) of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Section 6(3) of the Act provides that a term

of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. Requiring the washing of walls at the end of a tenancy regardless of the length of a tenancy or the cleanliness of the walls is a higher standard than the reasonably clean standard required by the Act. For that reason I find that this part of the addendum is not enforceable. There are no photos that show the walls of the unit being stained with smoke. I consider the Tenant's evidence of the state of the unit, including the state of the oven and stove at move-in to be highly persuasive. The tenancy was only 5 months old and ended during a season where a lawn would not yet likely require maintenance. There is no move-in or move-out condition report. For these reasons, I find that the Landlord has not substantiated on a balance of probabilities that the Tenants left the unit, yard or shed unclean or in a worse state than received. I therefore dismiss the Landlord's claim for costs to cleaning the unit, shed and yard. As the Landlord's claims have not been successful I find that the Landlord is not entitled to recovery of the filing fee and I dismiss this claim. In effect the Landlord's application is dismissed in its entirety.

Section 36(2) provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer opportunities for a move -in or move-out inspection. 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. RTB Policy Guideline #17 provides that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process.

Based on the undisputed evidence of no condition inspections, I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished. This extinguishment does not apply to claims against the security deposit for other damages. While I have found the Landlord's claim for lost rental income to be unsubstantiated I consider that the claim was not frivolous or an abuse of process as I consider that they did present prima facie evidence. As a result and since the Landlord applied within 15 days of receipt of the forwarding address I find that the Tenants are not entitled to return of double the security deposit. However as the Landlord has no valid claim against the security deposit I find that the Tenants are still entitled to return of the security deposit plus zero interest of **\$550.00**. As the Tenant's application has had some success I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$650.00**.

Conclusion

The Landlords' application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$650.00**. 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: October 13, 2017

Residential Tenancy Branch