



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 2:00 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

The landlord testified that on May 17, 2017, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail tracking number and receipt in support of service. The package was sent to the forwarding address provided by the tenant during the move-out inspection.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background & Evidence

This tenancy began on April 1, 2015 and was subsequently renewed for an additional 12 month fixed term expiring on March 31, 2017. The lease required the tenant to vacate the rental unit on March 31, 2017. The monthly rent was \$1350.00 and the tenant paid a security deposit of \$675.00 at the start of the tenancy which the landlord continues to hold.

The landlord is claiming loss of income for the month of May 2017. The landlord testified the lease ended March 31, 2017; however, the tenant requested an additional time to vacate. The tenant was first contacted on March 19, 2017 and advised that the lease was not going to be renewed. The landlord testified the tenant was offered one additional month. The tenant stated one month was not sufficient and the parties verbally agreed to 2 months. The landlord requested the tenant to sign a mutual agreement to end tenancy effective May 31, 2017 but this agreement was never signed. Correspondence on file confirms the landlord sent the tenant an e-mail on April 3, 2017 accepting payment for April 2017 as "use and occupancy only". The tenant was advised in this e-mail that acceptance of this payment does not re-instate the tenancy and that he still needs to sign the mutual agreement to end tenancy with an expiry date of either end of the month or end of next month. On April 29, 2017 the tenant informed the landlord by telephone that he was vacating on April 30, 2017. The landlord testified she was not able to re-rent the unit on such short notice until June 1, 2017.

The landlord is claiming \$100.00 for a move-out fee charged by the strata. The landlord submitted e-mail correspondence from the strata manager in respect to this charge.

The landlord is claiming \$231.84 in carpet cleaning expenses and \$280.00 for general cleaning of the rental unit. The landlord submits the carpet was left heavily soiled and stained and the rental unit was not left clean at the end of the tenancy. The landlord submitted receipts for these expenses.

The landlord is claiming the kitchen sink garburator was not working at the end of the tenancy. The landlord submitted an e-mail she sent to the tenant at the end of the tenancy advising him the garburator was not working. The tenant responded that it was working the last time he checked. The landlord also submitted a receipt for this expense. As per the receipt, the landlord had the garburator removed versus repaired.

The landlord testified the tenant failed to return a visitor's pass and is claiming \$25.00 for replacement of the pass. The landlord provided a receipt. The landlord is also claiming a kitchen strainer was missing and provided a receipt in the amount of \$11.52 for a replacement purchased.

The landlord is claiming an additional loss in the amount of \$375.00 for her time and labour in dealing with the contractors for the above issues, painting of a damaged fireplace and dealing with a storage locker issue. The landlord submitted pictures of damage to a fireplace.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires 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.

I find this tenancy agreement expired on March 31, 2017. The parties did not renew the lease or sign a mutual agreement to end tenancy after this date. The e-mail sent to the tenant on April 3, 2017 clearly advises the tenant that payment was being accepted as “use and occupancy” and the tenancy was not being re-instated. The tenant was advised that he needed to sign the mutual agreement to end tenancy with an effective date of either the end of April 2017 or end of May 2017. The mutual agreement was not signed; therefore, I find the tenancy was not renewed for a 2 month term as argued by the landlord. As the tenancy ended on March 31, 2017, as per the fixed term agreement, the tenant was not required to provide an additional 1 month notice to end tenancy. After March 31, 2017, the tenant was occupying the rental unit for “use and occupancy” only as confirmed to him by the landlord’s e-mail communication. This part of the landlord’s application is dismissed.

The landlord failed to provide any receipt/invoice or account statement that the \$100.00 move-out fee was in fact charged to her by the strata. This part of the landlord’s application is dismissed.

I accept the landlord’s claim that the tenant did not leave the carpets and the rental unit reasonable clean at the end of the tenancy. The landlord is awarded **\$511.84**.

The landlord has provided insufficient evidence to support that the garburator was damaged by the actions or neglect of the tenant. The repair receipt provides no details as to the cause of the garburator not functioning. The landlord did not have it repaired but rather had it removed all together. This part of the landlord’s claim is dismissed.

I accept the landlord’s claim for the missing visitor’s pass and kitchen strainer and award the landlord **\$36.52** for these two items.

The landlord’s claim for additional expenses for her time and labour in dealing with contractors etc, is dismissed. The bulk of this claim has already been awarded to the landlord in the form of receipts of the actual amounts invoiced by contractors for cleaning work. The landlord’s time for dealing arranging estimates and meeting contractors etc, is a cost of doing business to the landlord. In either event, the landlord has failed to provide any receipts or invoices to support this loss. The landlord submitted pictures of damage to a fireplace but did not provide any receipt for the paint or supplies required to fix the damage or any detailed invoice of the hours taken to do the painting work. This part of the landlord’s claim is dismissed.

As the landlord was for the most part not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application.

Total entitlement for Landlord: \$548.36 (\$511.84 + \$36.52)

The landlord continues to hold a security deposit in the amount of \$675.00. The landlord is permitted to retain \$548.36 from this security deposit in full satisfaction of the monetary award and the balance of \$126.64 is to be returned to the tenant forthwith.

The tenant is granted a Monetary Order in the amount of \$126.64.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$126.64. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 23, 2017

Residential Tenancy Branch