



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

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

The Tenants did not attend the hearing. I accept the Landlord’s evidence that each Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on November 16, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on November 21, 2017. The Landlords were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy, under written agreement, started May 1, 2017 for a fixed term to end October 31, 2017. The agreement requires the Tenant to move out of the unit at the end of the fixed term as the Landlords were going to move back into the unit at the end of the tenancy. The Tenants were aware of this reason for the requirement that they move out at the end of the fixed term. Rent of \$1,900.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$950.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed inspection report copied to the Tenant. The Tenant moved out of the unit on October 1, 2017 without providing the Landlords with any notice. The Landlords were out of the country at the time and no move-out inspection was offered to the Tenants. The Landlord moved back into the unit for the last week of October 2017 and discovered that the kitchen faucet had been broken and was leaking. The faucet was new in April 2016. The Landlord had the faucet replaced with a new faucet as it was apparent to both the Landlords and their contractor that the faucet could not be repaired. The Tenants provided their forwarding address in writing to the Landlord on November 10, 2017.

The Landlords withdraw all claims made in the application except for \$413.28 as the material cost of replacing the faucet, unpaid rent of \$1,900.00 and the filing fee of \$100.00.

Analysis

Section 45(2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the Act provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the Act, the notice is deemed to be changed to comply. As the Tenant's notice to end tenancy was for a date that was prior to the end date I find that the notice did not comply with the Act and was automatically corrected to the end of the fixed term. I find that the Tenant became liable to pay rent to the end of the fixed term.

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. Although the Tenant moved out before the fixed term end date and did not pay the last month's rent, the Landlord continued to have an obligation to take reasonable measures to mitigate or reduce that unpaid rent or lost rental income. As there was only one month left to the fixed term and as the Landlord was to move into the unit at the end of the fixed term I find that the Landlord could not reasonably have rented the unit out for that last month. As the Landlord moved into the unit for the last week of October 2017 I find that the Landlord acted to mitigate its losses and did not suffer any rental loss for this last week. I find that the Landlord is therefore entitled to unpaid rent for the three weeks in October 2017 in the amount of **\$1,425.00**.

Section 37 of the Act provides 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. Policy Guideline #40 provides that the useful life of a faucet is 15 years. Based on the Landlords' undisputed evidence that the faucet was new in April 2016 and that the Tenants left it damaged in October 2017 such that it could not be repaired, I find that the Landlord is entitled to the prorated cost of the replacement faucet in the amount of **\$388.13**. I calculate this amount based on what should have been a remaining useful

life of 13.5 years ($\$431.28/15 = 28.75$ value loss per year; $\$28.75 \times 13.5$ years = $\$388.13$ total lost value).

As the Landlords' application has had merit I find that the Landlords are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,913.13**. Deducting the security deposit plus zero interest of **\$950.00** leaves **\$963.13** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$950.00 in partial satisfaction of the claim and I grant the Landlord a monetary order under Section 67 of the Act for the remaining amount of **\$963.13**. 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: June 18, 2018

Residential Tenancy Branch