



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR 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 unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the landlord's application for dispute resolution and evidence submissions of both parties.

Issues

Is the landlord entitled to a monetary award and loss?

Is the landlord entitled to retain the security deposit and recover the filing fee?

Background & Evidence

The parties entered into a one year fixed term lease for the period of July 1, 2017 to June 30, 2018. The tenants moved in early on June 24, 2017 and vacated before the end of the fixed term on October 15, 2017. The monthly rent was \$3600.00. The tenants paid a security deposit of \$1800.00 at the start of the tenancy which the landlord continues to retain.

By way of an e-mail dated September 18, 2017, the tenants advised the landlord they would be ending the tenancy early on October 15, 2017 alleging various privacy, health

and safety concerns which were outlined in the e-mail. The tenants vacated the rental unit on October 15, 2017.

The landlord is claiming unpaid rent for the month of October 2017 in the amount of \$3600.00. The landlord testified the tenants put a stop payment on the October rent cheque. The landlord is also claiming a \$25.00 NSF charge and a \$25.00 late fee charge as a result.

The landlord is also claiming \$90.00 in cleaning fees. The landlord testified that the oven, hood fan and microwave were not left reasonable clean at the end of the tenancy. The landlord testified that these items were noted on the move-out inspection report but the tenant did not agree to this charge. The landlord submitted an invoice and various pictures of the clean-up work required.

The landlord is also claiming an additional \$3600.00 as the tenants failed to provide the required one month notice to end the lease.

The landlord is also claiming \$500.00 in costs associated with permitting the tenant to assign or sub-lease the unit. The landlord submits that clause #16 of the tenancy agreement allows this charge. The landlord testified he had to do a credit check on the new tenants. The new tenants moved in on October 20, 2017 and paid a pro-rated rent for this month.

The landlord disputes that there was any breach of a material term and submits that the tenant did not properly notify the landlord of any alleged breach.

The tenants testified that as the new tenants moved into the rental unit on October 20, 2017, the landlord only lost out on 5 days rent and that there security deposit should cover the first 15 days of the month.

The tenants testified that they hired professional cleaners to clean the entire house. The tenants acknowledged that the oven may not have been completely clean but it was nothing that could not have just been wiped down with a wet cloth. The tenants submitted pictures of the oven and microwave at the end of the tenancy.

The tenants submit that the \$500.00 charge for credit checks is a penalty and that a credit check would only have cost the landlord \$20.00 to \$30.00. The tenants submit that they found a tenant for the landlord.

The tenants submit that the landlord is seeking compensation for an additional month's rent which he hasn't lost as new tenants moved in 5 days later.

The tenants further argue that they ended the fixed term lease due to various material breaches by the landlord.

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.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8, Unconscionable and Material Terms, provides the following guidance:

In order to end a tenancy for a breach of a material term, the party alleging the breach must inform the other party in writing of the following:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

By way of an e-mail dated September 18, 2017, the tenants notified the landlord of various problems with the rental unit and in that same e-mail notified the landlord that they would be ending the tenancy on October 15, 2017.

I find the tenants have failed to establish that the tenancy was ended due to a material breach of the tenancy agreement. In the e-mail dated September 18, 2017, the tenants notified the landlord of various problems; however, they failed to notify the landlord that they viewed the "problems" as a material breach; failed to provide the landlord with a reasonable opportunity to correct the alleged "problems"; and failed to notify the landlord that they would end the tenancy if the "problems" was not fixed by the stated

deadline. The tenants were not able to provide any other supporting documentation of meeting all of the steps in writing before providing notice to end the tenancy.

Accordingly, I find the tenants are responsible for any losses suffered by the landlord as a result.

I accept the landlords claim for loss of October 2017 rent only for the period of October 1, 2017 to October 19, 2017. As the new tenants moved in on October 20, 2017 the landlord did not suffer any loss beyond this date. The landlord is awarded **\$2206.47** ($\$3600.00 / 31 \text{ days} = \$116.13 / \text{day} \times 19 \text{ days}$).

As the tenants failed to pay rent as required on October 1, 2017, and put a stop payment on the October cheque without first notifying the landlord, I award the landlord the **\$25.00** NSF charge and the **\$25.00** late fee as claimed.

Based upon the move-out inspection report and the pictures submitted by both parties, I find the oven, hood fan and microwave were not left reasonably clean at the end of the tenancy. The landlord submitted an invoice in support of this claim. I further note that the tenants did not provide any evidence in support of their argument that they had the unit professionally cleaned such as an invoice for this service. I award the landlord **\$90.00**.

I find the landlord has not supported the claim for the extra one month's rent due to the tenants not providing adequate notice to vacate. The landlord failed to show how he suffered a loss for this additional amount as new tenants moved in five days after the tenants ended their tenancy. This part of the landlord's claim is dismissed.

I note that the tenancy agreement does provide for a charge of \$3600.00 in liquidated damages if a tenant ends a fixed term lease early. However, the landlord did not appear to be claiming this amount as liquidated damages nor did the landlord submit any evidence in the hearing that this amount was to cover administrative costs of re-renting the unit.

Section 34(3) of the Act requires that a landlord must not charge a tenant anything for considering, investigation or consenting to an assignment or a sub-lease. Section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act.

I find that clause 16 of the tenancy agreement is not enforceable as it is an attempt to contract out of the Act by charging the tenant a fee for an assignment. This part of the landlord's claim is dismissed.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application for a total monetary award of **\$2,446.47**.

The landlord continues to hold a security deposit of \$1800.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

The landlord is therefore entitled to a monetary order for the balance of \$646.47.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$646.47**. Should the tenant 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: June 05, 2018

Residential Tenancy Branch