



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 and 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 the filing fee for this application from the tenant 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 and present evidence. The tenants confirmed service of the landlord's application and no issues were raised with respect to the service of the evidence on file.

Issues

Is the landlord entitled to a monetary award for unpaid rent and 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 and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The tenancy for this two bedroom apartment began on July 1, 2017 with a monthly rent of \$2375.00 payable on the 1st day of each month. The lease agreement was for a one year fixed term set to end on June 30, 2018. The tenants paid a security deposit of \$1187.50 at the start of the tenancy which the landlord continues to hold.

On December 29, 2017, the tenants issued a 30 day notice to vacate the rental unit with an effective date of January 31, 2018. The tenants vacated on this date. A move-in inspection was done on June 17, 2017 and a move-out inspection was done on January 31, 2018. The tenants did not provide a forwarding address to the landlord at the end of the tenancy.

The landlord submitted a "monetary order worksheet" which provides a detailed breakdown of the landlord's claims totaling \$3293.95.

The landlord is claiming \$2375.00 as loss of rent for the month of February 2018. The landlord submits the tenants broke the lease before the end of the fixed term. The landlord submitted copies of text messages supporting the landlord's attempts to mitigate the loss by having showings throughout January 2018 in attempt to re-rent the unit. The landlord also submitted a picture of an advertisement board outside of the apartment listing the unit available for a rent of \$2350.00/month. The landlord testified that they were able to re-rent the unit effective March 1, 2018 and submitted a copy of the new lease for the unit in support.

The landlord is also claiming \$100.00 in loss of rent as the difference over a four month period of March 1, 2018 to June 30, 2018 (expiry date of the fixed term lease) between the tenants lease in the amount of \$2375.00 and the amount of the new lease of \$2350.00.

Property Manager A.M. testified that the tenants had a prospective tenant to them on January 28, 2018. The prospective tenant came to view the apartment the same day but did not enter into a lease as it was out of his budget as he was looking to rent two units for the same price. A.M. testified that the new tenant moved in from another unit in the building and did not take possession until February 27, 2018.

The landlord is claiming an amount of \$610.00 for cleaning and painting work required at the end of the tenancy as well as re-keying locks.

Property Manager A.M. testified that the tenants left the rental unit in a state of uncleanliness and disrepair. A.M. testified that on the tenant V.K. was present for the

walk thorough inspection on move-out and he refused to participate and just stood in the kitchen area requesting his deposit to be returned immediately. A.M. testified that the tenant got increasingly angry and agitated as she pointed out deficiencies with the cleaning of the unit. A.M. testified that the tenant left without returning the keys. She sent him a text message as soon as he left requesting the keys be returned. She also sent an e-mail the following morning advising that she was going to get the locks rekeyed. The locks were rekeyed as the key was not returned. A.M. testified that most of the walls were restored to pre-tenancy condition with just cleaning with the exception of two walls which were required to be re-painted. A.M. testified that the building was a brand new building and this was these were the first tenants in this particular unit. It is for this reason that the move-in inspection report did not contain any comments.

Property Manager G.R. testified that he was present for the inspection and in addition to the condition inspection report he made some hand written notes on the condition of the unit which are submitted as evidence along with the report.

The landlord submitted various pictures taken during the move-out inspection including pictures of the baseboards, window sills, marks on walls, area behind the fridge, bathroom tub and cabinets. The landlord testified that none of these areas were cleaned satisfactorily. The landlord submitted invoices for the cleaning, painting and re-keying in support of the loss claimed.

The landlord is also claiming a process server fee of \$208.95. The landlord submits that the tenants did not provide a forwarding address at the end of the tenancy so they had to hire a process server who attempted service at the work address provided in the tenants' rental application.

The tenants submitted a letter from the prospective tenant they had referred to take over the tenancy. Tenant S.K. submits the landlord was charging an amount of \$2800.00 to the prospective tenant and refused to rent to him due to his racial discrimination. The letter submitted by the prospective tenant refers to this racial discrimination but also states that he requested an incentive for renting two units.

Tenant V.K. testified that the move-out inspection took no more than 10 minutes and it was the property manager that left before he did. V.K. testified that he was not aggressive but rather he just did not agree with the landlord's assessment. V.K. testified that the only deficiency pointed out by the landlord during the walk through was the area under the fridge which he acknowledged was not cleaned. V.K. testified that

when he was sent the e-mail requesting the key be returned he responded immediately and advised the key would be dropped off the next morning.

S.K. testified that the landlord never requested a forwarding address even though they sent an e-mail requesting the landlord to let them know if a forwarding address was needed. S.K. testified that she personally cleaned the rental unit before leaving and only the spot under the fridge was missed. S.K. testified that the tub area was dirty due to a repair issue with the tub which they notified the property manager about on multiple occasions. The tenants submitted their own pictures of the rental unit taken at the end of the tenancy.

The tenants further submit pictures of the rental unit taken from the outside allegedly on February 12, 2018. The tenants submit that they would often drive by the rental unit and these pictures support that the unit was re-rented prior to March 1, 2018. The tenants submit that the pictures show that a TV was on in the rental unit and the unit was furnished. The tenants submit that they also had a video which they were not able to upload.

In reply, the landlord submits they were doing work in the rental unit after the tenants vacated so the pictures submitted by the tenants reflect a light being on in the unit while work was being done.

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. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

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.

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 the tenants clearly broke the fixed term lease before the June 30, 2018 end date as per the tenancy agreement. I accept the landlord's testimony and evidence of the advertisement, evidence of subsequent showings in January 2018 and new lease

effective March 1, 2018 supports the landlords claim that they suffered a loss of rent for February 2018 and took reasonable steps to mitigate this loss. I find there is insufficient evidence in support of the tenants' claim that the prospective tenant was willing to take over the tenancy effective February 1, 2018 at the advertised rent of \$2350.00 and that he was discriminated against due to his race. The tenants did not call this prospective tenant as a witness so that his statement could be provided under oath and questioned by the landlord during the hearing. As such, I assign little weight to this statement. Further, the tenants own statement indicates that he requested an incentive for renting two units which corroborates the testimony of the property manager A.M. I find the tenants have provided insufficient evidence in support of their argument that the rental unit was occupied by the new tenant prior to March 1, 2018. The pictures submitted by the tenants do not conclusively support that the rental unit in question was occupied or that these pictures were taken on February 12, 2018. The date is just hand written on top of the pictures and could have been taken at any time. I accept the landlord's claim for loss of rent and award the landlord an amount of **\$2375.00**.

As I found the tenants contravened the Act by breaking a fixed term lease, I find the landlord also suffered a loss of \$100.00 which represents the difference of \$25.00 per month between for the four month period remaining on the lease. The landlord is awarded **\$100.00**.

I find that the tenants did not leave the rental unit reasonably clean and undamaged at the end of the tenancy and this is supported by the picture evidence and move-in/move-out inspection reports submitted by the landlord. I note that this tenancy was only for a 7 month period and the rental unit was new when the tenants took possession. As such, I find the condition of the rental unit at the end of the tenancy is beyond normal wear and tear expected from a tenancy of such short duration. The tenants also submitted pictures in which the rental unit does appear to be fairly clean however they are taken from a distance as compared to the pictures submitted by the landlord. For this reason, I assign more weight to the landlord's pictures. The inspection reports also reflect that the rental unit was not sufficiently cleaned. The landlord also submitted an invoice in support of the cleaning expense incurred. I accept the landlord's testimony and evidence that two walls required re-painting and the landlord's invoice as evidence of this loss. I also accept the landlord's claim and invoices in support of costs associated with re-keying the locks. I find the tenant should have returned these keys to the landlord at the time of the move-out inspection and not the day after. I find the landlord was within their right to have the locks re-keyed immediately. The landlord is awarded **\$610.00**.

I find the tenants failed to provide a forwarding address to the landlord. The obligation under the Act is on the tenants to provide a forwarding address it is not up to the landlord to request such. The tenants' argument that they asked the landlord if he required a forwarding address is unreasonable. In either event, the e-mail correspondence on file supports that the landlord's legal counsel requested the tenants to provide a forwarding address on at least two separate occasions. As such, I find the tenants to be responsible for the landlord's expense of hiring a process server. The landlord is awarded **\$208.95**.

As the landlord was 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 **\$3393.95**.

The landlord continues to hold a security deposit and pet deposit in the amount of \$1187.50. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of **\$2206.45**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2206.45. 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: October 23, 2018

Residential Tenancy Branch