



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

On December 10, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to keep the security deposit.

The matter was set for a conference call hearing. The Landlord attended the hearing; however, the Tenant did not. The Landlord provided affirmed testimony that he served the Tenant with the Notice of Dispute Resolution Proceeding documents using registered mail sent on December 14, 2018. The Landlord testified that he sent the registered mail to the address the Tenant provided to him at the end of the tenancy. The Landlord provided a copy of the registered mail receipt. The Landlord testified that he also sent a copy of the Notice of Dispute Resolution Proceeding documents to the Tenant using email sent to the address they regularly used during the tenancy. I find that the Tenant was served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Act.

The Landlord was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit?

Background and Evidence

The Landlord parties testified that the tenancy began on September 1, 2018, and ended on November 30, 2018. Rent in the amount of \$1,850.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$925.00.

The Landlord is seeking compensation in the amount of \$1,850.00 for a loss of rent for the month of December 2018, and \$100.00 for a strata fine.

Loss of Rent \$1,850.00

The tenancy ended on November 30, 2018, by way of a mutual agreement to end the tenancy. The Landlord testified that he could not rent the unit out for December 2018, because the Tenant did not respond to the Landlord's requests to show the rental unit to prospective Tenants.

The Landlord testified that he did not issue any written notices of entry and serve them directly to the Tenant or post written notices of entry on the Tenant's door. The Landlord testified that when he did not hear from the Tenant he entered the rental unit without notice, accompanied by the building concierge, and found the unit to be very messy.

The Landlord testified that due to the Tenant's failure to keep the unit clean and permit showings, the Landlord was unable to find a Tenant for the month of December 2018. The Landlord is seeking compensation in the amount of \$1,850.00 for a loss of December 2018, rent. The Landlord provided a copy of a mutual agreement to end tenancy that includes additional terms. The Tenant agreed to have the unit neat and tidy to show to prospective Tenants.

Strata Fine

The Landlord testified that the Tenant failed to arrange a move in time with the building concierge and moved in to the unit without making arrangements as required by the building strata rules. The building strata sent the Landlord an invoice for a \$100.00 fine. The Landlord is seeking to recover the \$100.00 fine from the Tenant. The Landlord provided a copy of the letter received from the strata that includes a \$100.00 fine. The Landlord testified that he paid the fine to the strata. The Landlord provided a copy of

the mutual agreement to end tenancy that provides additional terms that the Tenant agrees to pay the \$100.00 fine for moving into the rental unit.

Security Deposit

The Landlord is seeking to keep the security deposit of \$925.00 in partial satisfaction of his claim.

Analysis

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Section 29 of the Act provides that a Landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows

Strata Fine

I accept the Landlord's testimony that the Tenant moved into the unit without making the proper arrangements which resulted in a \$100.00 fine from the strata. I accept the Landlord's evidence of a mutual agreement to end tenancy that provides additional terms that the Tenant agreed to pay the \$100.00 violation fee for moving into the rental unit.

I award the Landlord the amount of \$100.00 for the strata fine.

Loss of Rent \$1,850.00

I find that the Landlord failed to provide proper notification to the Tenant that he wanted to enter the rental unit for the purpose of showing the unit to prospective Tenants. The Landlord never received direct permission to enter from the Tenant and he never issued any written notices of entry providing the reason and date and time of entry.

While the Tenant agreed to have the unit neat and tidy to show to prospective Tenants, this agreement does not diminish the requirement of the Landlord to provide written notice of entry. Since the Landlord never provided any written notices of entry, the Landlord cannot claim that he was refused entry into the unit. Had the Landlord provided written notice of entry, the Landlord could have entered the unit without waiting for the consent of the Tenant. I find that the Landlord breached section 29 of the Act by entering the unit without permission of the Tenant and without giving proper notice.

I find that any obligation of the Tenant to have the unit tidy for showings to prospective Tenants is also connected to a request for entry by the Landlord. The Tenant cannot be expected to have the unit tidy if he is not properly informed of the date and time of entry.

For the reasons provided above, the Landlord's claim to recover a loss of December 2018, rent is dismissed.

Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was partially successful with his claims. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Security Deposit

The Landlord has established a monetary award in the amount of \$200.00.

I authorize the Landlord to keep the amount of \$200.00 from the security deposit of 925.00. The Landlord is ordered to return the balance of \$725.00 to the Tenant.

Conclusion

The Landlord's claim for a loss of December 2018 rent was not successful and is dismissed without leave to reapply.

The Landlord established the claim in the amount of \$200.00 due to the cost of a strata fine and the filing fee for this hearing.

The Landlord is authorized to keep \$200.00 from the security deposit and is ordered to return the balance of \$725.00 to the Tenant.

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: April 02, 2019

Residential Tenancy Branch