



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking to keep all or part of the security deposit due to alleged damages by the tenant to the rental unit, for a monetary order for damages and loss of rental income and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to cross-examine the other party, and make submissions to me.

Only the evidence timely submitted and relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for alleged damages and lost rent and to recover the filing fee?

Background and Evidence

The landlord testified that this one year, fixed term tenancy began on August 1, 2010, ended on November 3, 2010, monthly rent was \$1,450.00 and the tenant paid a security deposit of \$725.00 at the end of July, 2010.

The tenant testified the tenancy ended on November 1, 2010.

The landlord's evidence included a carpet cleaning invoice, an invoice for cleaning the stove and washroom, a utility bill, and the tenancy agreement.

The landlord's monetary claim is \$1,799.37, comprised of lost rent of \$1,450.00 for November 2010, unpaid utilities of \$159.77, and carpet cleaning and cleaning in the amount of \$189.60.

The landlord testified that she had an agreement with the tenant that she, the tenant, would move out at the end of October, but that the tenant did not move until November 3, 2010, causing her to lose rent for the month of November.

Additionally, according to the landlord, the carpets were extremely dirty and, along with the stove and washroom, required cleaning.

Upon query, the landlord stated that she advertised the rental unit for November, on Craigslist, but was unsuccessful in re-renting. I note the landlord did not submit evidence of her attempts at re-renting the rental unit.

Additionally, the landlord acknowledged that there was no move-in or move-out condition inspection report.

The landlord admitted that she had not returned any portion of the tenant's security deposit, but that she had the tenant's permission to withhold the costs of cleaning and carpet cleaning.

In response, the tenant agreed that she was responsible for \$159.77 in utility costs, but denied that she agreed to be responsible for cleaning and carpet cleaning.

As to the remaining claim, the tenant responded that the landlord approached her at the end of September 2010, and asked her to move out by the end of October 2010. The tenant agreed, but requested a written eviction notice from the landlord, which the landlord submitted.

On October 31, the tenant testified that she sought permission from the landlord to stay until November 1, as she was unable to find a rental truck for moving as the last day of the month was on a Sunday. The landlord agreed, according to the tenant and that she did in fact move out on November 1, 2010.

As to the alleged unclean rental unit, the tenant testified that the rental unit and carpet were filthy when she moved in as she needed something quickly due to relocating and starting a job in two days. The tenant testified that she has had to clean the rental unit after moving in due to this condition.

The tenant agreed that there was no move-in or move-out inspection report.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the landlord in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 23(3) of the Residential Tenancy Act (the “Act”) requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. A failure to provide the opportunities for inspection at the end of the tenancy results in the extinguishing the right of a landlord to claim against the deposit for damages.

In the absence of a condition inspection report, I find the landlord has not established the condition of the rental unit either before or after this tenancy and therefore I find that the landlord has **not** proven a monetary claim for the alleged damages or cleaning of the rental unit.

Additionally the landlord caused the tenant to vacate the premises just three months into the one year, fixed term tenancy and I find on a balance of probabilities that the tenant moved out on November 1, 2010, with the landlord’s permission, instead of November 3, 2010, as claimed by the landlord.

I therefore do not find the landlord is entitled to claim for lost rent and furthermore, the landlord has not submitted any evidence that she took steps to mitigate her loss by advertising the rental unit.

I **dismiss** the portion of the landlord’s Application for lost or unpaid rent for November 2010, for the cost of cleaning and carpet cleaning, all in the amount of \$1,639.60, **without leave to reapply**.

I decline to award the landlord the filing fee.

I find that the landlord has established a monetary claim in the amount \$159.77, comprised of the utility bill the tenant agreed owing.

Conclusion

Under authority of Section 67 of the Act, I allow the landlord to deduct the amount of \$159.77 from the tenant's security deposit of \$725.00, and **direct** the landlord to return the balance of the tenant's security deposit in the amount of \$565.23 forthwith.

I grant the tenant a monetary **Order** in the amount of \$565.23.

I am enclosing a monetary order for \$565.23 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the landlord fail to comply with this monetary order.

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: July 25, 2011.

Residential Tenancy Branch