



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 for a monetary order for unpaid rent or rental income lost, carpet cleaning costs, and the filing fee, and an order to retain the security deposit.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent or rental income loss and the filing fee and an order to keep the security deposit?

Background and Evidence

The Landlord and Tenant agree that they had a fixed term tenancy agreement for the period January 01, 2011 to August 31, 2011. The parties agree that the tenancy agreement stated that the rent is \$600.00 per month, due on the first of the month, and that the Landlord received a security deposit of \$300.00 from the Tenant. The parties agree that a move-in inspection occurred at the commencement of the tenancy.

The Tenant stated that he and his finance had to move out of the rental unit at the end of February 2011, and that they understood their obligation under the fixed term tenancy agreement to ensure that the Landlord continued to receive rent. The Tenant stated that he continued to pay the rent until he found an individual CL to sublease the rental unit to. The Tenant stated that he introduced CL to the Landlord and explained that CL would be subleasing the rental unit. The Tenant stated that the Landlord made no objections to this. The Tenant stated that he had a verbal agreement with the Landlord that the rent be reduced to only \$500.00 per month for the remaining four months of the tenancy agreement as only one person would be living in the rental unit rather than two. The Tenant stated that he requested CL to directly pay the cheques to the Landlord as he would be out of town. The Tenant stated that the Landlord accepted CL's cheques and cashed them without indicating to the Tenant that he had any problem with the amount of the cheques. The Tenant stated that he does not owe the Landlord any rent,

and he would like his security deposit returned. The Tenant has not filed an application for dispute resolution.

The Landlord stated that although the Tenant subleased to CL, the tenancy agreement was not changed. The Landlord repeatedly stated during the hearing that he did not make any verbal agreement with the Tenant to reduce the rent to \$500.00. The Landlord stated that he wants the tenancy agreement enforced and that the Tenant owes him a difference of \$100.00 per month for four months, for a total of \$400.00 in unpaid rent or rental income lost.

The Landlord stated that he did not schedule a move-out inspection with the Tenant as he knew the Tenant was not in town until September. The Landlord stated that he proceeded to clean the carpets in the rental unit and proceeded to sign a new tenancy agreement for September 01, 2011 with the new tenant being CL.

The Tenant stated that the Landlord did not advise him of any opportunity for a move out inspection to be done rather he thought it could be done on September 07, 2011 when he returned to town. The Tenant stated that the Landlord had his contact information in Calgary and could have phoned him or contacted him at any time. The Tenant stated that he stayed in regular contact throughout the tenancy with the Landlord. The Tenant stated that when he contacted the Landlord upon returning to town in September, the Landlord did not indicate when or if a move-out inspection would be occurring. The Tenant stated that he contacted the Landlord again and requested his security deposit be returned, however the Landlord refused to do so and told him he owed rent and money for carpet cleaning. The Tenant stated that he could have designated a friend to do the move-out inspection on his behalf, if an inspection had been scheduled for a date prior to September 07, 2011. The Tenant's evidence states that on August 30, 2011 he had friends of his attend the rental unit to pick up his remaining belongings from the rental unit before the tenancy ended.

The Landlord stated that he carpet cleaned the rental unit and the Tenant owes \$40.00 for carpet cleaning.

The Tenant agreed at the hearing that he owes the Landlord \$40.00 for carpet cleaning.

The Landlord stated that he is seeking a monetary order for the outstanding rent/rental income lost, the carpet cleaning cost, plus the filing fee. The Landlord also stated that he would like to have an order to keep the security deposit.

Analysis

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

I find that the parties had a fixed term tenancy which did not end until August 31, 2011. I find that the Tenant has failed to prove that there was any agreement with the Landlord to reduce the rent when the Tenant had a sublessee move into the rental unit. I also find from the Tenant's evidence that he left belongings in the rental unit until August 30, 2011 at which point he had his friends remove the belongings on his behalf.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. Although the Tenant found someone to sublease the rental unit to, and arranged that the sublessee pay rent to the Landlord, unfortunately the monthly payments made were only \$500.00 per month for May, June, July, and August 2011. The tenancy agreement states that the monthly rent is \$600.00 per month. The Tenant has not proven that the tenancy agreement was replaced by any other agreement with the Landlord. I find that the Landlord has established a monetary claim totaling \$400.00 for unpaid rent/rental income loss for May, June, July, and August 2011 (\$100.00 x 4 months).

The written tenancy agreement signed by the parties also requires that carpet cleaning must be done by a professional cleaning company and the Tenant must provide proof of the cleaning invoice before moving out. The Tenant stated that he did not have the carpet cleaning done and that he is in agreement with the Landlord's claim for \$40.00 for the carpet cleaning. I find that the Landlord is entitled to \$40.00 for the carpet cleaning, which brings the balance owing to \$440.00

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$490.00.

The Landlord holds the Tenant's security deposit of \$300.00. The parties confirmed that they did not do a move-out inspection as required by the Act. The Landlord confirmed that he signed a new tenancy agreement with a new tenant, who happened to be the aforementioned sublessee, for September 01, 2011, and had the carpets cleaned without doing a move-out inspection with the original Tenant or a designated agent for the Tenant. The Landlord provided no evidence of any attempts to schedule a move out inspection with the Tenant and no evidence of any notice of an inspection was provided. I find that the Landlord has not met the requirements of section 35 of the Act. However, as the Landlord filed an Application for dispute resolution of his claims within 15 days of receiving the Tenant's forwarding address, I can order the Landlord to retain the security deposit in partial satisfaction of the money he is owed for unpaid rent/rental income loss, the carpet cleaning, and the filing fee. I order that the Landlord retain the security deposit of in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$190.00**.

Conclusion

I find that the Landlord is entitled to \$490.00 comprised of unpaid rent/rental income loss, carpet cleaning costs and the filing fee. As I have ordered that the Landlord retain the security deposit of \$300.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$190.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: December 22, 2011.

Residential Tenancy Branch