



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Act and the tenancy agreement, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

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

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.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on June 1, 2008, with the parties entering into a written tenancy agreement. At the outset of the tenancy the Landlord received a security deposit of \$362.50 from the Tenant. At the end of the tenancy the monthly rent payable was \$765.00, payable on the first day of the month.

On October 6, 2011, the Tenant gave the Landlord a notice to end the tenancy with an effective date at the end of October 2011. The Tenant signed a form entitled, "Late Notice to Vacate", in which the Tenant acknowledges they are giving the Landlord notice which does not comply with the Act. The Tenant also acknowledged that the rent was payable to the last day of November, 2011, if the suite is not re-rented.

At the end of the tenancy an Agent for the Landlord also performed an outgoing condition inspection report. In the report, in a paragraph entitled, "Security Deposit Statement", the Tenant has signed and agreed that the Landlord may deduct \$765.00 for unpaid rent and \$80.00 for cleaning of the rental unit.

The Landlord claims \$813.00 for outstanding rent for November 2011, \$80.00 for cleaning and for \$50.00 for the filing fee for the Application.

In evidence the Landlord submitted copies of the tenancy agreement, the outgoing condition inspection report, a Late Notice to Vacate document, a Tenant ledger and an invoice for cleaning the rental unit.

I note that the "Tenant Ledger" indicates that the Tenant owes \$765.00 for rent and \$80.00 for cleaning.

The Agent for the Landlord testified that the rental unit was rented to another renter on December 1, 2011.

In reply, the Advocate for the Tenant stated that the Tenant did not know what he was signing when he signed the Security Deposit Statement. According to the advocate the Tenant thought it was just part of the move out report. The Advocate testified that the Tenant had a hearing disability.

The Advocate for the Tenant cross examined the Agent for the Landlord regarding when the Landlord started advertising for the rental unit. The Advocate also alleged that the Landlord could have rented the rental unit earlier than the first of December, as there was a waiting list to get into the building.

The Agent for the Landlord testified the Landlord started advertising the rental unit on the day after they received the Tenant's notice to vacate. The Agent also testified he was aware of no waiting list to get into the rental unit building.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has breached section 37 of the Act by failing to clean the rental unit at the end of the tenancy, and has breached section 45 of the Act, by failing to give the Landlord the required notice to end tenancy.

I find that the Tenant agreed to pay the Landlord \$80.00 for cleaning, as well as to pay rent for November if the Landlord could not re-rent the subject rental unit. The documents that the Tenant signed are clear. There was insufficient evidence from the Tenant or his Advocate that would substantiate the Tenant lacked capacity to understand these documents when he signed them.

Under the Act, if the Tenant wished to end the tenancy on October 31, 2011, then the latest the notice to end tenancy could have been given to the Landlord was September 30, 2011. Therefore, I find the Tenant failed to provide the Landlord with the required notice.

Based on the testimony, I further find that the Landlord mitigated its losses by advertising the rental unit following receipt of the late notice to vacate from the Tenant.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches by the Tenant have caused the Landlord to suffer a loss.

I find that the Landlord has established a total monetary claim of **\$895.00**, comprised of \$765.00 in rent for November 2011, \$80.00 for cleaning, and \$50.00 for the filing fee for the Application.

It is unclear in the Landlord's evidence as to why they request \$813.00 for rent, when the amount due was \$765.00. Therefore, I have only allowed the amount of \$765.00 in rent for November.

I order that the Landlord retain the deposit and interest of **\$365.93** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$529.07**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 26, 2012.

Residential Tenancy Branch