



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by an agent for the landlord and an agent for the tenant.

The tenant's agent sought more time to prepare for this hearing as he had only been provided with the information within the last few days and was not even sure if he had everything to be able to provide a response to the landlord's claims.

The landlord testified they had served with the tenant with the notice of hearing documents; this Application for Dispute Resolution; and their evidence, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on May 17, 2012 in accordance with Section 89.

I reviewed what evidence the tenant's agent had and while he indicated that he had not received some parts of the landlord's evidence I found that he had sufficient documentation of the landlord's case to provide an informed response.

Further I noted that despite the tenant's agent's assertion that there may have been medical reasons for the tenant not being able to attend this hearing the tenant has provided no evidence to support this claim. In addition, failure of a party to prepare their agent appropriately is not sufficient cause to adjourn any hearing.

For the above noted reasons I did not grant an adjournment and the hearing proceeded.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for overholding rent; for compensation for damage to the unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on September 3, 2009 for a 1 year fixed term tenancy beginning on September 1, 2009 that converted to a month to month tenancy on September 1, 2010 for a monthly rent at the end of the tenancy of \$879.78 due on the 1st of each month with a security deposit of \$425.00 paid.

The landlord submitted a copy of the tenant's notice to end the tenancy effective on April 30, 2012 and the parties agreed that despite the notice and subsequent communication between the onsite agent and the tenant the tenant failed to vacate the rental unit until 10:00 p.m. on May 5, 2012.

The landlord seeks compensation for the tenant overholding the rental unit for a period of 5 days. In addition the landlord seeks compensation for lost rental income because the new tenant moving into this rental unit was moving from another unit in the same complex and the landlord was not able to rent that unit for the same period of time.

The landlord's agent testified the other unit was vacant from May 2012 to the end of June 2012. The tenant's agent asserted that the tenant should not be held responsible for rent in the other unit because the landlord did not have it rented out effective May 1, 2012.

The parties also agree that during the tenancy the tenant had painted the rental unit with some very bright and vivid colours including walls and trim and kitchen and bathroom cabinetry. While the landlord's claim originally included compensation for painting the ceiling in the unit neither party could confirm that the ceiling required painting as a result of the tenant's painting.

The landlord's agent was uncertain as to the date of the last painting completed by the landlord in the rental unit as this landlord took possession of the property after the start of this tenancy.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Residential Tenancy Policy Guideline #3 states that a tenant is not liable to pay rent after a tenancy agreement has ended, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

Based on the testimony of both parties I find the tenant overheld the rental unit until May 5, 2012 and the landlord is entitled to rent based on the per diem rate of \$879.78 divided by 31 days times 5 days or \$141.90.

As to the landlord's claim for compensation for lost rent from the other rental unit that the new tenant was going to move from. I accept the tenant's agent's position that the landlord did not have the unit rent out and therefore has suffered no loss. I find the landlord has failed to establish a loss resulting from the tenant's action and I therefore dismiss this portion of the landlord's claim.

In regard to the landlord's claim for painting, while normally a landlord is expected to paint a rental unit within reasonable intervals I find that the colour choices and the fact that cabinetry had been painted by the tenant constitute damage to the rental unit and find the landlord is entitled to compensation for painting walls, trim and cabinetry. I find the landlord has failed to establish painting the ceiling was required as a result of the tenant's actions.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,176.90** comprised of \$141.90 overholding rent owed; \$985.00 painting and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$425.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$751.90**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 16, 2012.

Residential Tenancy Branch