



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order authorizing the retention of the tenant's security and pet deposits. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the deposits that she holds?

Background and Evidence

The rental unit is an apartment in Nelson. The tenant viewed the apartment in April and signed a tenancy agreement. The tenancy was to commence on May 1, 2014 on a month to month basis with rent in the amount of \$650.00 payable on the first of each month. The tenant paid a security deposit of \$325.00 and a pet deposit of \$160.00 on April 10, 2014.

The tenant wanted to paid the rental unit and the landlord agreed to allow the tenant to have access to the unit before the tenancy was set to commence in order to paint. The landlord agreed to pay for paint and materials and the tenant agreed to perform the painting without reimbursement for her time.

The tenant said that when she was at the rental unit performing painting, she discovered problems with the rental unit; she noticed that there were several large holes in the walls, hidden by a mirror and a picture and she said that there were many bugs around the unit. The tenant said that the unit was also very dirty and there were unfinished areas of floor and drywall in the apartment. The tenant sent an e-mail to the

landlord to ask if she was planning to have the apartment cleaned before she moved in. The landlord replied, saying that she did not think it needed cleaning and would not be reimbursing the tenant for cleaning expenses.

The tenant requested a walkthrough of the rental unit on April 25th and met with the landlord on that day. The tenant said she was upset about the state of the rental unit and by the landlord's demeanour and some of her remarks during the meeting. She told the landlord on April 2th that she had decided not to proceed with the tenancy and that she would not be moving in.

The landlord testified that she attempted to persuade the tenant to rent the unit, but was unsuccessful. The landlord said she immediately started advertising for a new tenant. The landlord said that she re-rented the unit effective May 18th and received a half month's rent for May. The landlord said that the tenant left some garbage and debris from painting behind in the rental unit. The landlord testified that she spent four hours cleaning up after the tenant to ready the unit for re-renting.

The landlord and the tenant each submitted documents as well as photographs and copies of e-mail exchanges on flash drives submitted as evidence. I viewed the evidence from the landlord and the tenant after hearing the oral testimony of each party.

Analysis

I find that the tenant did not have sufficient grounds for ending the tenancy prior to its commencement without notice. The tenant inspected the rental unit and signed a tenancy agreement based on that inspection. She spent several days in the rental unit performing painting before she complained of deficiencies and told the landlord that she would not proceed with the rental.

The only likely basis that would justify the tenant in ending this tenancy would be if she established that the landlord had breached a material term of the tenancy and did not correct it within a reasonable time after the landlord was given written notice to do so.

Section 45(3) of the *Residential Tenancy Act* provides:

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Residential Tenancy Policy Guideline No. 6 provides that breach of the covenant of quiet enjoyment has been held to be a breach of a material term of a tenancy agreement. The guideline notes that the standard of proof is high – it is necessary to find that there has been a significant interference with the use of the premises.

I do not find that the tenant's concerns about the rental unit, expressed two weeks after she signed the tenancy agreement constitute grounds to end the tenancy. This is particularly so where the tenant was given early access to the unit and spent a number of days in the unit performing painting before she communicated the complaints to the landlord.

I find that the landlord acted properly to mitigate her damages by immediately advertising the unit for rent and by securing a new tenant to rent the unit effective May 18th. I find that the landlord is entitled to recover loss of revenue for the first two weeks of May in the amount of \$325.00 and I award the landlord the sum of \$60.00 for necessary cleanup of the mess and debris left by the tenant after painting.

Conclusion

The landlord is entitled to recover the \$50.00 filing fee for her application, for a total award of \$435.00. I order that the landlord retain the said sum from the security and pet deposits of \$485.00 that she holds in full and final satisfaction of her claims in this proceeding. The tenant is entitled to a monetary award for the balance of her deposits in the amount of \$50.00 and I grant the tenant an order under section 67 in the said amount. This order may be registered in the Small Claims Court and 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: September 04, 2014

