Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKY INTERNATIONAL INVESTMENT CORP LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNDC FF

Introduction

This hearing was convened in response to an application by the landlord under *the Residential Tenancy Act* (the Act) for unpaid rent / loss of revenue, and loss under the Act in the total amount of $11,471.86 which the landlord orally amended to $5,871.86.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The landlord acknowledged receiving the evidence of the tenant. The tenant acknowledges receiving the evidence of the landlord. Regardless of which, the landlord and tenant were each given opportunity to orally provide their respective evidence and were given opportunity to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The *relevant* testimony and other evidence in this matter are as follows. On March 27, 2014 the landlord offered to the tenant, by text, Unit #211 for $800.00 and unit #301 for $780.00. The parties agreed by text that the tenant could rent unit #211 for $800.00 and the parties further agreed to meet late the following day to complete a written Tenancy Agreement. On March 28, 2014 the parties signed the one year fixed-term agreement for the agreed amount of $800.00 and the landlord agreed to also exchange the kitchen appliances. The landlord did not dispute the tenant's testimony that in the following 2 days they were told that Unit #211 had already been rented out by another member of the landlord, however #301 remained available. The tenant testified that

they were left with no options at that juncture but to take the switched unit despite that the unit #301 had carpeting which exacerbates their allergies: having chosen #211 as it had no carpeting, despite the higher amount for rent. The tenant testified they viewed #301 on March 30, 2014 while it was still occupied and were promised the unit would be cleaned and the carpets professionally cleaned before their occupancy days later. The tenant took possession April 01, 2014 and provided cheques for security deposit and first month. They testified when they took possession of the unit it was dirty and odorous with a promise it would be cleaned and were offered $10.00 to clean a portion of it. In addition they discovered syringes in the hallway of the unit, to which they immediately alerted the manager whom they recall did not seem overly-concerned. The tenant testified that when they received their copy of the tenancy agreement the first page contained #301 as the unit number, although the monthly rent remained at $800.00 as originally agreed for #211. The tenant also testified that the Application for Rental indicates #211 is scratched out and #301 written above it. The tenant claims the landlord adjusted their original agreement after it was signed. The tenant testified that they tried very hard to accept the switched unit but that it was dirty, noisy and, with carpeting, was not at all what they agreed to and determined to vacate and eventually did so on April 14, 2014. The tenant provided a quantum of photographs of unit #301 – each photo file last modified April 07, 2014. The photographs depict the rental unit with staining on carpets and sills and generally with a visible unclean appearance. The tenant also provided photos of texts with the landlord confirming they were renting #211.

The landlord testified the tenant signed the tenancy agreement in good faith to rent #301 for the fixed-term under the agreed condition respecting alternate appliances for the kitchen and should be accountable for the fixed term and the cost of the appliances. The landlord provided a copy of the tenancy agreement indicating the first page with the unit number as #301, an invoice order dated March 31, 2014 for kitchen appliances and a cursory condition inspection report dated March 30, 2014 as all “G” – good in all categories, signed by the landlord but not the tenant and further absent the unit number of the residential property. The tenant testified they looked in on the unit but they and the landlord did not conduct a mutual room to room inspection and were not offered to sign the report. The landlord also testified that after the tenant vacated they advertised the unit on-line, and was, “maybe viewed by a few people” over several months. They recalled that an individual was interested in May or June 2014 but did not pass a credit check. The rental unit was re-rented September 01, 2014. The landlord did not provide any additional evidence to support their claim of the efforts made to re-rent the unit. The landlord claims all rent to August 31, 2014, and cost of the exchanged appliances.

The parties further agreed that the tenant caused their rent cheque for April 2014 to become un-negotiable, with the result that the landlord has not realized any income.

Analysis

On preponderance of all the evidence in this matter and on balance of probabilities, I have reached a Decision upon the following findings.

I find the tenant ended the tenancy without providing the landlord with the prescribed Notice to end the tenancy in accordance with Section 45 of the Act. However, I find that *I prefer* the evidence of the tenant, that at a crucial late moment in the realization of the tenancy agreement to rent a certain rental unit the tenant was manipulated into accepting a different unit - not of their choice - which ultimately did not meet the tenant's needs or expectations making it unacceptable to the tenant. I find the landlord has provided evidence that, on balance of probabilities, supports the tenant's version of events, including the altered Application for Rent, an ambiguous condition inspection report, and the tenancy agreement with the rent amount corresponding to unit #211 rather than #301 and, I find, likely altered after it was signed. Effectively, I find the landlord's conduct resulted in a degree of negligent representation which provided the tenant concern and sufficient cause to abandon the unit. None the less, I find the tenant did occupy the rental unit and the landlord should be compensated for its occupancy. I grant the landlord an award equivalent to the rent for April 2014 in the amount of **$800.00** for unpaid rent/ loss of revenue, without leave to reapply.

I find that the landlord agreed to exchange the appliances in unit #301. I have not been provided evidence to suggest the landlord was forced into doing so, or the reason behind exchanging the appliances, other than the tenant requested it and the landlord agreed. It must also be noted that the landlord retains the appliances as their own. I find no basis that the tenant is responsible for the landlord's decision to exchange the appliances. **I dismiss** this portion of the landlord's claim, without leave to reapply.

The landlord is not entitled to "administration fees" for time spent to file this application. However, I grant the landlord recovery of the filing fee in the limited amount of $50.00.

Calculation for Monetary Order

April 2014 rent / Loss of revenue	$800.00
Filing fee	50.00
monetary award to landlord	**$850.00**

Conclusion

I grant the landlord an Order under Section 67 of the Act for the amount of **$850.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 24, 2014

Residential Tenancy Branch