



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUN LIFE ASSURANCE COMPANY
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a monetary order for loss of revenue, NSF fee, cleaning costs, carpet cleaning, window cover cleaning and liquidated damages. The landlord is claiming \$1,609.50.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

Issue(s) to be Decided

Is the landlord is entitled to monetary compensation?

Background and Evidence

The tenancy began on November 16, 2013 as a one-year fixed-term tenancy expiring on November 30, 2014. The tenant vacated without giving advance notice on June 19, 2014. The rent was \$920.00 per month and a security deposit of \$460.00 was paid.

Submitted into evidence was a copy of the tenancy agreement, a copy of the move-out condition inspection report, copies of communications, receipts, a copy of the tenant's ledger and copies of photographs of the unit taken at the end of the tenancy.

The landlord testified that the tenant had signed for a one-year fixed term but the tenant suddenly moved out. The landlord testified that they had the tenant sign a written notice to confirm he was vacating.

The landlord testified that they advertised the unit immediately. The landlord testified that, after the tenant moved, they were not able to re-rent the unit until August 1 2014

and suffered a \$920 loss of rent for the month of July 2014, which is being claimed. The landlord is also claiming \$25.00 for an NSF fee because the landlord was unsuccessful in their attempt to cash the tenant's rent cheque for July 2014, after the tenant had already vacated.

The tenant testified that the landlord did not validly seek new tenants to re-rent the rental unit during the month of July 2014. The tenant testified that a family member called the landlord seeking a rental unit like the tenant's to move into in July 2014, and was told by the landlord that they didn't have any vacancies.

The landlord testified that the tenant left the unit in need of cleaning, carpet cleaning and cleaning of the window treatments and these costs are being claimed. In support of the claims, the landlord submitted copies of the move-in and move-out inspection reports, photos and receipts.

The tenant disputed the landlord's claims for the cleaning and stated that he had arranged for cleaning of the total apartment before vacating and it was left in pristine condition.

In regard to the carpets, the tenant stated that, although the carpets looked clean when he originally moved in, once the pile was flattened it was clear that they were already discoloured and stained.

In regard to the window treatments, the tenant stated that, after moving in he discovered that the blinds were soiled in places and this was mentioned to the landlord at the time.

The tenant pointed out that his tenancy only lasted a few months and he was rarely living in the unit for more than a few days as he worked in another community. The tenant requests that the landlord's claims for cleaning be dismissed.

The landlord testified that the tenancy agreement contained a liquidated damage clause that requires the tenant to pay \$350.00 for terminating the tenancy prior to the expiry date and this is being claimed.

Analysis

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

With respect to the loss of revenue claim for July, 2014, I find that the tenant did violate the agreement and that the landlord suffered a loss. I find that the landlord provided evidence to indicate that they consistently advertise vacant suites on a regular basis and evidence to prove that, on July 2, 2014, a new renter signed a tenancy to commence on August 1, 2014. For this reason, I accept that the unit was not rented until August 1, 2014.

However I find that the landlord carries the burden of proof to show that the loss was solely due to the tenant's violation of the contract and they took reasonable steps to mitigate the resulting losses. I find that I have no reason to disbelieve the tenant's allegation that they were told there were no vacancies and that no rental unit was available for July 1, 2014. The tenant stated that the landlord had intentionally left the unit vacant during July 2014, possibly to renovate the suite.

I find that the landlord had inexplicably attempted to cash the tenant's post-dated rent cheque for the month of July 2014, despite the fact that the landlord was fully aware that the tenant had permanently vacated the rental unit as of June 19, 2014.

Based on the evidence and a balance of probabilities, I find that the landlord's claim for loss of revenue must be dismissed. I also find that the landlord's claim for compensation of \$25.00 for the NSF charges for the returned July 2014 cheque must also be dismissed because this deposit was made in contravention of the Act.

In regard to the costs incurred for cleaning, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographs, I find that the rental unit was left in a reasonably clean condition with a few some minor areas in need of touching up. In regard to the carpet-cleaning I find that the tenant would usually be obligated to shampoo the carpets before vacating if they were not clean, even though the tenancy was short-lived. In the case before me, I find that there were some areas of the carpet that clearly did require cleaning and I find that the landlord is entitled to be compensated \$120.00. In regard to the cleaning of the window treatments, I find that the landlord has not sufficiently proven that they were soiled by the tenant. Accordingly I find that the landlord's entitlement for the claims for cleaning is \$120.00.

In regard to the claim for liquidated damages, I find that the landlord is entitled to be compensated \$350.00 based on the contract.

I find that the landlord has established a total monetary entitlement of \$520.00, comprised of \$120.00 for carpet cleaning, \$350.00 liquidated damages and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the tenant's \$460.00 security deposit in partial satisfaction of the claim leaving \$60.00 still outstanding in favour of the landlord..

I hereby grant the landlord a monetary order in the amount of \$60.00. This order must be served on the tenant and may be enforced through Small Claims Court if necessary.

Conclusion

The landlord is partly successful in the application and is granted a monetary order.

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 04, 2014

Residential Tenancy Branch

