



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant's representative acknowledged receipt of the landlord's application and amended application for dispute resolution and evidence package.

Issues

Is the landlord entitled to a monetary compensation as claimed?

Background & Evidence

The tenancy began on February 1, 2017 and was supposed to be for a fixed term of one year expiring on January 31, 2018. The monthly rent was \$1395.00. The tenant paid a security deposit of \$697.50 at the start of the tenancy which the landlord continues to retain.

By way of an e-mail dated May 28, 2017, the tenant advised the landlord he would be ending the tenancy early with immediate effect. The tenant alleged various complaints he had in respect to the rental unit. The tenant vacated the rental unit on May 31, 2017.

The landlord is claiming \$697.50. in liquidated damages as the tenant ended the fixed term tenancy early. The landlord submits the tenancy agreement signed by the tenant provides for liquidated damages to cover the administrative costs associated with re-renting the unit.

The landlord is also claiming loss of rent in the amount of \$1395.00 for the month of June 2017. The landlord testified that the suite was advertised for rent immediately but was not re-rented until July 1, 2017 at a lower monthly rent. The landlord submitted a copy of the advertisement placed to re-rent the unit. The landlord submits the liquidated damages clause in the tenancy agreement provides for the landlord to recover loss of rent which remains unliquidated.

The landlord is claiming \$25.00 in cleaning fees for 1 hours labour spent cleaning the bathtub, stove and fridge. An invoice was submitted for this expense.

The landlord is also claiming an amount of \$78.75 for steam cleaning the carpets. The landlord submits the tenancy agreement requires the tenant to pay for professional cleaning at the end of the tenancy when the carpets are new or professionally cleaned at the start of the tenancy. An invoice was submitted for this expense. The landlord also submitted a condition inspection report which indicates the carpets were professionally cleaned at the start of the tenancy.

The tenant did not attend the hearing to provide any affirmed testimony. Instead, the tenant's representative read out a statement written by the tenant. In this statement, the tenant raised various concerns with the tenancy which he allegedly raised with the landlord. The tenant acknowledges breaking the lease after nothing was done by the landlord in response to his complaints. The tenant submits the apartment was left clean.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8, Unconscionable and Material Terms, provides the following guidance:

In order to end a tenancy for a breach of a material term, the party alleging the breach must inform the other party in writing of the following:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find the tenant has failed to establish that the tenancy was ended due to a material breach of the tenancy agreement; failed to provide the landlord with a reasonable opportunity to correct the alleged breach; and failed to notify the landlord that they would end the tenancy if the problem was not fixed by the stated deadline.

The tenancy agreement signed by the parties stipulates the landlord may require the tenant to pay a sum of \$697.50 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term.

I find the amount of \$697.50 as being a reasonable pre-estimate of the loss in order to compensate the landlord for any administrative costs incurred in re-renting the unit. I find this amount is not extravagant and does not constitute a penalty. I accept the landlord's claim of **\$697.50** in liquidated damages.

I accept the landlord's testimony and evidence and find the landlord attempted to mitigate losses by re-renting the rental unit as soon as possible but suffered a loss of rent for the month of June 2017. I accept the landlord's claim for loss of rent in the amount of **\$1395.00**.

I also prefer the landlord's affirmed testimony and evidence with respect to costs incurred to clean the rental unit including the carpets over the statement read by the tenant's representative. The tenant did not attend the hearing to provide affirmed testimony and did not present any evidence in support of his statement that the rental unit was left clean. Further, the tenancy agreement requires the tenant to pay for

professional cleaning at the end of the tenancy when the carpets are new or professionally cleaned at the start of the tenancy. The move-in condition inspection report submitted by the landlord indicates the carpets were professionally cleaned at the start of the tenancy. I accept the landlord's claim in the amount of **\$25.00** for cleaning and in the amount of **\$78.75** for carpet cleaning.

As the landlord was successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application for a total monetary award of **\$2296.25**.

The landlord continues to hold a security deposit and pet deposit in the amount of \$697.50. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, the landlord is entitled to a monetary order in the amount of **\$1,598.75**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$1,598.75**. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 28, 2017

Residential Tenancy Branch