

Decision

Dispute Codes:

MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a Monetary Order for unpaid rent, a Monetary Order for damages to the rental unit, a Monetary Order for money owed or for compensation for damage or loss under the Act, regulation or tenancy agreement, to retain all or part of the security deposit, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to ask relevant questions of the other party, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a Monetary Order for damage to the rental unit; for a Monetary Order for loss of rent; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord stated that this tenancy began on April 26, 2008. The Tenants agreed that they began moving their personal property into the rental unit on April 26, 2008, but stated that they did not move into the rental unit until May 01, 2008. The parties agree that the Tenants vacated the rental unit on May 16, 2008.

The evidence shows that this tenancy was the subject of a dispute resolution hearing on September 25, 2008. At that hearing, _____, a Dispute Resolution Officer, determined that the Tenants were justified in vacating the rental unit in May of 2008, without giving the Landlord notice of their intent to end the tenancy. The evidence also shows that _____ determined that the Landlord ended the tenancy by behaviour that _____ described as "aggressive and bizarre". The evidence also shows that _____

ordered the Landlord to return the rent paid by the Tenants for the month of May and to pay double the amount of the security deposit and the pet damage deposit to the Tenants.

The Landlord has applied for compensation for loss of rent for the month of June, in the amount of \$1,170.00, claiming that the Tenants ended the tenancy without providing proper notice of their intent to vacate.

The Landlord has applied to retain the security deposit paid by the Tenants, in the amount of \$550.00.

The Landlord is seeking compensation, in the amount of \$150.00, for damages to the rental unit that occurred when the Tenants installed their internet service. The Landlord stated that the Tenants made numerous holes in the ceiling when they used screws to affix coaxial cable to the ceiling in various locations of the rental unit. He stated that they made numerous holes in the wall when they installed an internet modem in the kitchen. He stated that they altered several telephone and internet cable outlets, which he described as "illegal" that would need to be rewired by an electrician.

The male Tenant denies making holes in the ceiling. He stated that a modem was professionally installed in the kitchen by a technician from Shaw cable. He stated that he was aware that the Landlord wanted the modem installed in the garage, but the modem was not installed in the garage because he did not have access to the garage, which prevented him from granting access to the technician at the time the modem was installed, and would have prevented him from accessing the modem in the future.

The Landlord stated that he was available to provide the technician access to the garage on the day the Tenant advised him the technician was to attend, but that the technician did not arrive at the scheduled time. The Landlord believes the Tenants intentionally changed the installation date to a date when he would not be present.

The Landlord stated that he mailed photographs of the damages caused by the wiring to the Tenant on October 21, 2008, which is two days before the hearing. The Tenants stated that they did not receive the photographs prior to the hearing. The photographs were not available to the Dispute Resolution Officer at the time of the hearing.

The Landlord stated that he was unable to serve the photographs of the damage at an earlier date because he was suffering from a carpal tunnel injury. I do not find that this is a reasonable explanation for the delay in serving this evidence. As the Landlord has not established a reasonable reason for wilfully failing to serve the evidence in accordance with the rules of procedure, I ruled that the evidence was not admissible.

The Landlord submitted no evidence from an electrician to establish that the wiring for the internet had been done improperly or that it constituted a safety hazard.

The Landlord is claiming compensation, in the amount of \$100.00, for the cost of cleaning the rental unit at the end of the tenancy. He stated that the Tenants left bottles and garbage in the rental unit, that the fridge was not cleaned and that the fireplace was not cleaned.

The witness for the Landlord stated that he assisted the Landlord in cleaning the rental unit at the end of the tenancy. He stated the rental unit was very dirty and that there was garbage left behind. This witness initially stated that he was an acquaintance of the Landlord; he then stated that he worked with the Landlord a "long time ago", and stated that he helped him clean the rental unit because he was an "okay guy".

The male Tenant stated that he personally cleaned the rental unit at the end of the tenancy because his wife was afraid to return to the rental unit. He stated that the rental unit could not have been particularly dirty because they only lived in it for sixteen days.

The behaviour of both Tenants was civil and respectful throughout the hearing, and the evidence they gave was forthright and direct. Conversely, the Landlord disrupted the hearing on at least three occasions by snickering while the male Tenant was presenting his evidence. At the conclusion of the hearing when the Landlord was given the opportunity to add relevant evidence, he expressed his personal view that the system was weighted in favour of tenants. The Landlord continued to express his opinions after being advised that his statements were not relevant to the issues at hand, and he was subsequently advised that the hearing was being concluded.

Analysis

Section 77(3) of the Act stipulates that except as otherwise provided in the Act, a decision or order of the director is final and binding on the parties. In these circumstances, the end of the tenancy, which is a pivotal issue in this matter, was considered by _____, a Dispute Resolution Officer, on September 25, 2008, at which time she determined that the actions of the Landlord effectively ended the tenancy in May of 2008.

As _____ determined that the Tenants acted appropriately when they vacated the rental unit in May of 2008, and that the Landlord ended the tenancy by his actions, I find that the Landlord is not entitled to any compensation for loss of revenue for the month of June. On this basis, I dismiss the Landlord's application for compensation for loss of rent for June.

_____ also determined, on September 25, 2008, that the Tenants were entitled to the return of their damage deposit. I therefore dismiss the Landlord's application to retain the Tenant's security deposit, pursuant to section 77(3) of the Act, as that matter has been previously decided by the director.

After hearing the contradictory testimony of both parties, I find that the Landlord submitted insufficient evidence to establish that the Tenants damaged the rental unit, beyond reasonable wear and tear, when they installed internet service to their rental unit. In reaching this conclusion, I was guided by the following:

- The Tenants denied making holes in the ceiling to run coaxial cable
- The Landlord did not submit any evidence to corroborate his statements that the Tenant made holes in the ceiling
- The Landlord and the Tenants agree that internet service was installed by a technician from Shaw Cable, which causes me to believe that the installation was both legal and safe
- The Landlord and the Tenant agree that the internet modem was installed on the kitchen wall. While I understand that this was not the Landlord's preferred location, I find it was reasonable for the Tenants to install the modem in a location where it could be readily accessed by the Tenants
- In the absence of photographs that demonstrate the size of the holes caused by installing the modem, I am left to assume that they are relatively small. I find that the holes that would generally result from installing an internet modem are quite small and would normally be considered reasonable wear and tear.

As the Landlord has failed to establish that the Tenants damaged the rental unit, beyond reasonable wear and tear, when they installed internet service, I hereby dismiss the Landlord's application for compensation for any damages related to that service.

After hearing the contradictory testimony of both parties, I find that the Landlord has submitted insufficient evidence to show that the Tenants did not leave the rental unit reasonably clean at the end of the tenancy. In reaching this conclusion I was strongly influenced by the lack of documentary evidence, such as photographs or a condition inspection report that corroborates the Landlord's statement that the rental unit was not properly cleaned.

I placed little or no weight on the evidence provided by the witness for the Landlord, as I did not find him to be a particularly credible witness. I find it difficult to accept that he is merely a casual acquaintance of the Landlord, as I find it difficult to accept that a casual acquaintance would help the Landlord clean a rental unit. As I found that he was not forthright about his relationship with the

Landlord, I question the credibility of his description of the condition of the rental unit at the end of the tenancy.

I also accept the argument presented by the Tenant, in that the rental unit could not have been particularly dirty at the end of the tenancy, given that the only occupant occupied the rental unit for a period of sixteen days.

As the Landlord has failed to establish that the Tenants did not properly clean the rental unit at the end of the tenancy, I hereby dismiss his application for compensation for cleaning.

Conclusion

I find that the Landlord has not established a monetary claim. As the Landlord's application has been without merit, I hereby dismiss his application for compensation for the cost of filing this Application for Dispute Resolution.

Date of Decision: October 27, 2008