



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the rental unit. An agent for the landlord and one of the two tenants attended the teleconference hearing. The landlord stated that he had served notice of the hearing on both tenants by registered mail at the last known address provided by the tenants, and I found that both tenants were deemed to have been served with notice of the hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on February 1, 2008 as a one-year fixed term tenancy. At the outset of the tenancy the tenants paid to the landlord a security deposit of \$1300 and a pet deposit of \$1300. The landlord did not provide a copy of the tenancy agreement as evidence on this application, but the landlord's agent gave testimony in the hearing that the agreement included a liquidated damages clause which required the tenants to pay \$1300 plus GST if they broke the lease prior to the end of the fixed term.

The tenancy ended on July 1, 2008. One of the two tenants, M., who did not appear and participate in this hearing, participated in a move-out inspection and signed a condition inspection report. The report indicated that there was damage to the rental unit for which the tenant was responsible, including as follows: "bedroom wall needs to be replaced – approx. \$500"; "replace 2 door handles + 1 lock – basement bedroom – paint 2 wall – clean kitchen (53.55)." On the report, M. agreed to deductions from the

security deposit as follows: “\$1300 + GST – liq. damages”; “repairs – approx. \$6-700”; “cleaning \$53.55.”

The tenants applied for dispute resolution seeking recovery of their security and pet deposits, and the matter was heard by DRO ABC on October 16, 2008. In her decision of October 17, 2008, on file #723203, DRO ABC found that in regard to the security deposit only, the agreed-upon deductions exceeded the amount of the security deposit and interest, and the landlord was therefore not obligated to return any part of the security deposit.

In this hearing, the landlord applied for a monetary order for the following: \$53.55 for cleaning the kitchen; \$322.35 to change the locks; \$997.50 to rebuild a divider wall demolished by the tenants; and \$65 for GST for the liquidated damages. In regard to the divider wall, the landlord explained that there was a divider wall that the tenants completely removed during the tenancy, and the cost to the landlord in repairing the wall totaled \$997.50. The move-in and move-out condition inspection report contains a note as follows: “slats in wall next to bathroom damaged.” However, it is not clear whether the note was made at the time of move-in or move-out. The landlord could not give an approximate age for the original doors that formed part of the divider wall. In regard to the GST charge, the landlord indicated that this was a charge that the owner had to pay, and the landlord therefore sought to recover the amount from the tenants.

The tenant stated that he did not dispute the amounts for cleaning or changing the locks but he took issue with the costs for the divider wall. The tenant described the wall as being comprised of two closet doors that were damaged and not operational when the tenants first moved in. The tenants removed the doors in order to install a pool table. The tenant believed that it would have cost the landlord between \$200 and \$400 to replace the doors that made up the wall at the outset of the tenancy, and that the landlord was seeking to make improvements at the tenants’ expense.

Analysis

As the tenant did not dispute the costs for cleaning and changing the locks, I find that the landlord is entitled to the amounts claimed of \$53.55 for cleaning and \$322.35 for changing the locks.

In regard to the divider wall, I find that the landlord is not entitled to the full amount claimed. I accept the testimony of the tenant regarding the condition of the wall at the time of move-in, and the landlord has provided insufficient evidence to establish the condition of the wall before the tenants removed the doors, or that the wall, such that it was, could have been repaired for a lesser cost. The tenant M agreed on the move-out inspection that the tenants were responsible for the cost of repairing the wall, at an approximate cost of \$500. I therefore find the landlord is entitled to \$500 for repair of the wall.

In regard to the \$65 the landlord claimed for GST on the liquidated damages, I find that as the landlord did not provide as evidence either a copy of the tenancy agreement or proof that the landlord was legally entitled to collect GST on liquidated damages, the landlord is not entitled to this amount.

The landlord has also claimed and is entitled to recovery of the \$50 filing fee.

Conclusion

I grant the landlord an order under section 67 for the balance due of \$925.90. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 5, 2009