

Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNSD

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

The hearing was originally scheduled to take place on December 18, but on that date the parties were unable to proceed as neither had received the evidence of the other. At the January 16 hearing, the tenant acknowledged having received the landlord's evidence, but the landlord stated that he did not have the tenant's evidence. The landlord testified that the tenant tried to personally serve him with the evidence, but as she tried to gain access to the building under an assumed name, he refused to permit her to enter, thereby thwarting her attempts to serve him with her evidence. However, the landlord said that he took no issue with me considering the tenant's evidence despite the landlord not having received it. Accordingly the evidence of both parties has been considered.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on March 1, 2008 and ended on October 31, 2008 and that the landlord holds a security deposit in the amount of \$400.00. The rental unit is an apartment on the third floor of a 3-storey apartment building. The landlord alleges that the tenant or her repairman broke a hatch entrance to the roof of the building and damaged the roof in an attempt to repair or adjust a satellite dish and seeks to recover the cost of repairing the hatch and the roof membrane. The tenant denied the allegation. The landlord further seeks to recover the \$78.75 cost of cleaning

the carpets in the rental unit. At the end of the tenancy the tenant agreed in writing on the condition inspection report that the landlord could retain that amount from the security deposit. At the beginning of the hearing the tenant was specifically asked if she agreed that the landlord was entitled to the cost of cleaning the carpets and the tenant confirmed that she was in agreement. However, by the end of the hearing and at the urging of her advocate, the tenant changed her position and said that she did not agree that the landlord should be able to recover the cost of carpet cleaning and testified that she only signed the agreement on the condition inspection report because she was under the impression that she had to.

The landlord testified that security cameras show that in early September, a man who the landlord knows to be a satellite dish installer or repairman came in through the front entrance of the building and to the rental unit. The landlord testified that on September 16, 2008 he received an unsigned letter purportedly from the “tenants at suite 309” asking for access to the roof on September 19 for purposes of repairing a satellite dish. The landlord testified that he responded to the letter in writing on September 24 by denying access and advising the tenants that they were not permitted to install a satellite dish. The tenants denied having written the September 16 letter and further denied having received the September 24 letter authored by the landlord. The landlord testified that he was unaware that the tenants had a satellite dish and after having received the September 19 letter, he checked the roof and found that the hatch had been forced open, thereby damaging it, and the membrane of the roof damaged around the area of a satellite dish which had previously belonged to a tenant in another apartment, hereinafter referred to as S.S..

The landlord submitted a copy of the invoice for \$2,550.00 for the repair of the hatch and the roof membrane. The repairman who performed the repairs appeared at the hearing to testify as to the damage that was done to the hatch and roof. The witness testified that he had been on the roof approximately -3 weeks prior to the repair indicated on the invoice and at that time no damage had been done to the hatch or to the roof around the suspect satellite dish. The witness further testified that when he performed the repair, sometime in mid-September, he noticed that the roof membrane was cracked within 3 – 4 feet around the satellite dish in question and theorized that the

membrane was damaged by someone walking near the dish or moving the concrete bricks which held it in position.

The tenant testified that she purchased the satellite dish from S.S. when S.S. moved and that because she lived on the floor directly below the tenant, all that had to be done was to pull the wire up to the rental unit and connect it to the receiver received from S.S.. The tenant insisted that she received good reception and no adjustment to the dish was required. The tenant specifically denied that she or a repairman acting on her behalf attempted to access the roof, damaged the hatch or damaged the roof membrane. The tenant testified that she did not access the roof until after the tenancy had ended, at which time the landlord permitted her to remove the satellite dish. The tenant's husband testified that he was the one who removed the satellite dish from the roof at the end of the tenancy and testified that he noticed that approximately 20 other dishes were on the roof.

The landlord testified that while only his own dish and that of the tenant were installed, there were a number of other dishes on the roof which were loose, unsecured to the roof.

Analysis

I find that the tenant agreed in writing that the landlord could retain \$78.75 as the cost of cleaning the carpet. There was no evidence presented that the tenant made that agreement under duress and I find no reason to permit the tenant to change her position now. I find the landlord is entitled to retain \$78.75 and award the landlord that sum.

As for the landlord's claim for the cost of repairing the hatch and damaged area of the roof, I find that the landlord has failed to prove on the balance of probabilities that the tenant or her repairman damaged the hatch or roof membrane. The landlord acknowledged that his cameras did not show the actual access to the hatch and as there were numerous dishes on the roof, there were a number of tenants in the building who might have had reason to access the roof. The landlord's claim for the cost of the hatch and roof membrane repair is dismissed.

Conclusion

The landlord has established a claim for \$128.75, which represents the cost of carpet cleaning and the \$50.00 fee paid to bring this application. I order that the landlord deduct this amount from the \$405.02 deposit and interest he currently holds and I order the landlord to return the balance of \$276.27 to the tenant forthwith. I grant the tenant an order under section 67 for \$276.27. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated January 20, 2009.