

Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNSD, FF

Introduction

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

Issue(s) to be Decided

Is the landlord prevented from making a claim against the security deposit?

Background and Evidence

The parties agreed that the tenancy began on March 30, 2008 and was set to continue for a one-year term, ending on March 30, 2009. The parties further agreed that the tenants acquired a puppy, contrary to the terms of the agreement and that the puppy caused some damage to the rental unit. The landlord testified that he found out that the tenants were moving just 3 days prior to the time they vacated the rental unit, which was on or about October 31, 2008. The tenants testified that they had discussions with the landlord prior to that time in which the parties agreed that the lease should be terminated. The parties had discussions respecting repairs to the rental unit and agreed that the tenants would perform the repairs. The parties agreed that the tenants surrendered possession of the unit at the end of October and after that time had to be let into the unit to perform repairs. The tenants testified that they were only able to access the rental unit when the landlord chose to give them access, which hindered their ability to effect repairs quickly. The tenants performed considerable repairs, including changing carpets, carpentry work, painting and cleaning.

The landlord testified that on or about November 5 he spoke with the tenants and told them that if they completed repairs within two weeks, he would return their security deposit in full. The tenants testified that the landlord said that they must complete

repairs by the end of November in order to obtain the security deposit. The landlord testified that at the end of November, he brought in another painter as he was not satisfied with the painting performed by the tenants. The landlord also testified that there was an unpleasant smell in the rental unit and asked the tenants to bring in an air purifier. The tenants testified that they brought in professional painters who painted twice, the second time because the landlord was unsatisfied with the first paint job. The tenants further testified that when the landlord told them he wanted them to purify the air, they purchased an air ionizer but were unable to arrange with the landlord a time to access the rental unit.

The landlord filed his application for dispute resolution on November 28. The landlord testified that he had to re-paint the unit after the tenants had already painted because he was unsatisfied with their work. The landlord further testified that the tenants had broken a built-in table and that he estimated that it would cost approximately \$3,000.00 to replace the table. The landlord further testified that he was unable to re-rent the rental unit until January 1, causing him to lose income in December and that while the tenants had been paying \$3,200.00 per month in rent, the new tenants were paying \$2,600.00 per month. The landlord testified that he was willing to accept the security deposit in full satisfaction of his claim, but said he wanted to teach the tenants a lesson and repeatedly threatened that if the tenants did not permit him to retain the security deposit and promise that they would never again behave as they had, he would bring a further application to recover other, unspecified damages.

Analysis

The Act provides that tenants are responsible to repair any damage which goes beyond what may be considered reasonable wear and tear. A landlord may apply to recover any loss which results from a tenant's failure to make such repairs. In this case, the tenants have acknowledged that their puppy caused damage to the rental unit, thereby triggering their responsibility to perform repairs. It is clear to me that the parties came to an agreement that the tenants would themselves perform repairs and that the landlord permitted access to the rental unit to permit them to do so. It is also clear to me and I find that the parties made an agreement that if the tenants performed the repairs, they

would receive a refund of their security deposit.

The landlord bears the burden of proving that he suffered a loss and proving the quantum of that loss. The landlord provided no supporting, documentary evidence such as a condition inspection report with respect to the condition of the rental unit at the beginning of the tenancy and no supporting, documentary or photographic evidence as to the condition of the rental unit at the end of the tenancy or at the end of the repairs. It is therefore impossible for me to determine whether the tenants returned the rental unit to its original condition and I must consider that it is entirely possible that the tenants improved the rental unit as a result of their labours. Further, the landlord provided no invoices or estimates to show the cost of repairs he may have undertaken. I find that the landlord has failed to meet this burden.

Although the landlord claims he imposed a specific deadline on the tenants, because the landlord had exclusive control over when the tenants and their contractors could access the rental unit to perform the repairs, I find that even if there were a specific deadline in place, the landlord could easily have prevented the tenants from meeting that deadline, thereby obtaining their services without returning the deposit. However, I find that the landlord has failed to prove on the balance of probabilities that there was a deadline in mid-November.

The fact that the landlord was willing to enter into an agreement for repair in exchange for the return of the deposit leads me to find that the landlord waived his right to claim loss of income for the month of November as it does not make sense that the landlord would agree to return a security deposit if he intended to hold the tenants responsible for his inability to re-rent the unit while repairs were underway.

I am not satisfied that the landlord made appropriate steps to mitigate his losses by attempting to re-rent the unit for December. However, even if I were satisfied that such steps had been taken, by the same reasoning in the above paragraph, I find that it is nonsensical that the landlord would agree to return the security deposit if he intended to hold the tenants responsible for any loss of income.

As I have found that the landlord has failed to prove that he has suffered a loss for

which he should be compensated and that he waived his right to claim loss of income, I dismiss the landlord's claim in its entirety.

With respect to the landlord's declaration that he will bring further claims against the tenants, I note that there exists a principle which has been widely accepted by the courts against splitting one homogenous claim into two or more quantitative parts when the full amount should have been claimed on a single cause of action.

Conclusion

The landlord's claim is dismissed.

I order that the landlord return to the tenants forthwith the whole of the security deposit, in addition to the \$18.16 in interest which has accrued to the date of this judgment. I grant the tenants an order under section 67 for the sum of \$1,618.16. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated January 19, 2009.