

## **DECISION**

**Dispute Codes:** MND, MNR, OPR, 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 partial satisfaction of the claim.

### **Preliminary Matters**

The landlord withdrew his application for an order of possession as the tenants already moved out on January 10, 2009. The landlord also withdrew his claim for the cost of key replacement in the amount of \$20.00. I therefore dismiss the landlord's application for an order of possession and a monetary order for \$20.00.

### **Background and Evidence**

On October 1, 2008, the landlord collected a security deposit from the tenants in the amount of \$400.00. On October 4, the landlord and the tenants conducted a move in condition inspection and the resulting report was signed by all parties. The tenancy began on November 1, 2008. Rent in the amount of \$800.00 was payable in advance on the first day of each month. The tenants failed to pay rent in the month of January 2009 and on January 6, the landlord served the tenants with a notice to end tenancy for non-payment of rent. On January 10, the tenants moved out. The landlord made several attempts to schedule a move out condition inspection with the tenant but he was unsuccessful. On January 14, the landlord issued a notice of final opportunity to schedule a condition inspection to the tenants. The tenants again failed to respond. The landlord then proceeded to conduct the move out condition inspection without the tenants on January 14.

### **Issues to be Decided**

Whether the landlord is entitled to a monetary order for unpaid rent and late payment charges?

Whether the landlord is entitled to a monetary order for costs incurred in addressing the damages?

### **Analysis**

#### **Issue #1 – Whether the landlord is entitled to a monetary order for unpaid rent and late payment charges?**

The tenants admitted that they have not paid the January rent of \$800.00. The landlord referred to clause B of the addendum to the tenancy agreement that states the applicability of a \$25.00 charge for late payment of rent. Based on this clause, he is claiming for \$25.00 late payment charges for January. Based on the above, I find that the landlord has established a claim of \$800.00 in unpaid rent and \$25.00 in late payment charges.

#### **Issue #2 – Whether the landlord is entitled to a monetary order for costs incurred in addressing the damages?**

The landlord is claiming for the following costs incurred in addressing the damages.

#### **Cleaning**

The landlord is claiming for \$153.00 for 7 hours of cleaning of the unit after the tenants moved out. To support his claim, the landlord submitted 1) a time record from their cleaning staff listing the items that required cleaning and time required to complete the cleaning; and 2) the move in and move out condition inspection reports showing the conditions of the unit during these inspections.

The tenants said that the unit was dirty when they moved in and when they moved out, they just left it in the same condition. The tenants submitted some photos showing that the floor was dirty when they moved in.

I note that the move in condition inspection report dated October 4, 2008 indicates that the unit was in good condition throughout. Furthermore, the same report makes no mention of any part of the unit being dirty. I also note that the move out condition inspection report dated January 14 indicates that numerous areas throughout the unit were dirty. I have also given little weight to the photos submitted by the tenants for these reasons. The photos supposedly taken when the tenants moved in were undated. Furthermore, only two of these photos show the "cleanliness" of the unit and they show only one area of the floor. The photos taken when the tenants moved out show only the kitchen counter and a partial area of the stove top.

Based on the above, I find that the landlord has proven that the tenants had left the unit dirty and that cleaning was required. I therefore allow the landlord's claim for \$153.00 for cleaning.

#### Carpet Cleaning

The landlord is claiming for \$63.00 for carpet cleaning. To support his claim, he submitted 1) an invoice from a carpet cleaner dated February 10, 2009 showing a charge of \$68.26 for cleaning the carpet of unit; and 2) the move in and move out condition inspection reports showing that the carpet was in good condition when the tenants moved in and that it was dirty when the tenants moved out.

The tenants maintained that the carpet was dirty when they moved in. I note that the move in condition inspection report dated October 4, 2008 shows that the flooring throughout the unit was in good condition. I also note that the move out condition inspection report dated January 14 shows that the flooring in the unit was in poor and dirty condition. Based on the above, I find that the landlord has proven that the tenants had left the carpet dirty and that it required cleaning. I therefore allow the landlord's claim of \$63.00 for carpet cleaning.

#### Kitchen Counter Top Replacement

The landlord said that when the tenants moved in, the kitchen counter top had just been replaced and therefore it was brand new. He also said that when the tenants moved out, there were numerous cut marks in all three sections of the kitchen counter top. To support his claim, the landlord submitted photos showing various cut marks at different parts of the kitchen counter top.

The tenants admitted to having made some cut marks on the kitchen counter top near the fridge. But they disputed that they had made cut marks in all three sections of the kitchen counter top. The tenant submitted one photo showing cuts marks in one area of the kitchen counter top.

Based on the photos submitted by the landlord, I find that the landlord has proven that the tenants have made various cut marks in all three sections of the kitchen counter top and that the kitchen counter top needs to be replaced. The landlord submitted a quote dated August 31, 2008 from a company showing the replacement of the kitchen counter top of the unit would cost \$743.40. The landlord said that he has since obtained a more recent quote showing that such replacement would cost \$516.00. He is claiming for this amount and I allow his claim based on my findings as stated above.

### **Conclusion**

Based on all of the above, I find that the landlord has established a total claim of \$1557.00. The landlord is also entitled to recovery of the filing fee of \$50.00 for this application. I order that the landlord retain the security deposit and interest of \$401.51 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1205.49. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 30, 2009.