



Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a monetary order for compensation for repairs and cleaning in the unit, compensation for loss of rental income, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee for this application. Both parties participated in the hearing and each gave affirmed testimony.

Issue to be Decided

- Whether the landlord is entitled to a monetary order under the *Act*

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on September 1, 1998. As a result of an order of possession issued in favour of the landlord, the tenancy ended on December 31, 2008. Not including parking, at the time when tenancy ended it is understood that monthly rent was \$620.00. Including parking it appears to have been as high as \$650.00 per month. In any event, rent was due and payable in advance on the first day of each month. A security deposit of \$297.50 was collected on or about September 1, 1998.

Following the departure of the tenant from the unit at the end of December 2008, the landlord claims she was left with a unit which was in need of considerable cleaning and repair. Her evidence in support of this position includes photographs of the unit in addition to an itemized breakdown of costs. My findings in related to these costs are set out below.

Analysis

In order to decide these issues, I have carefully weighed the testimony and documentary evidence presented by the parties. A test for assessing credibility is set out in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (BCCA). In part, the tests reads as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject the story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize in that place and those circumstances.....(pp. 356-357)

The tenant claims she paid her son \$1,000.00 to undertake certain work in the unit following the end of tenancy. However, the evidence she submitted was limited to a breakdown of the various components of her cost as follows:

\$180.00 - removal of garbage and furniture from the unit

\$150.00 – vacuum and clean the unit

\$ 80.00 – dryclean drapes

\$ 75.00 – clean stove and fridge

\$ 50.00 – clean balcony

\$ 50.00 – replace damaged ceiling light fixture in dining room

Total: \$585.00

Further to the above costs, the landlord testified that she incurred costs totaling \$700.00 for repairs and tiling in the bathroom. The extent of this particular damage is set out in

some detail in the Decision issued on December 12, 2008 which arose from the hearing in a dispute between these parties held on November 19 and December 11, 2008.

In her application the landlord also claims loss of one month's rental income. However, she testified that the unit is not ready for occupancy in spite of being vacant for more than two months and that no advertising for rental of the unit has been undertaken. In the result, I dismiss this particular aspect of the landlord's application.

Further, in her application the landlord estimated the cost to replace damaged carpet in the unit at \$4,000.00. However, during the hearing the landlord testified that she has subsequently obtained an outside estimate of this cost in the amount of \$3,500.00. As the landlord acknowledged that she has not yet actually replaced the carpet and incurred any related cost, I dismiss this aspect of her claim with leave to reapply.

Pursuant to all of the above information, I find on a balance of probabilities that the landlord has established a claim for \$1,335.00. This is comprised of \$585.00 for the list of itemized costs set out above, \$700.00 for repairs and tiling in the bathroom, and the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$297.50 plus interest of \$35.10, and I grant the landlord a monetary order under section 67 of the *Act* for the balance due of \$1,002.40 (\$1,335.00 – \$332.60).

Conclusion

I hereby grant the landlord a monetary order under section 67 of the *Act* for **\$1,002.40**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: March 9, 2009

Dispute Resolution Officer