

DECISION

Dispute Codes: OPR, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order 1) for loss of income, and 2) costs incurred in addressing the damages; and an order to retain the security deposit in partial satisfaction of the claim.

Preliminary Matters

Preliminary Matter #1

On May 5, 2009 the Residential Tenancy Branch received a package of documentary evidence from the landlord containing details of her claim, invoices, receipts, photos and two Canada Post receipts as proof of service of documents to the tenant. The landlord said that she had served the tenant with the same evidence package on May 2. The tenant said that she did not receive such a package. I have reviewed the two Canada Post receipts dated March 24, 2009 and May 4, 2009 and I find no evidence to indicate that the tenant was served with this evidence package. Based on the above, I have not admitted this evidence package as evidence for this hearing and I have not relied on its content in my analysis and decision.

Preliminary Matter #2

The tenant submitted a letter dated May 15, 2009 to the Residential Tenancy Branch. I have not accepted this letter as evidence for this hearing as it was submitted after the hearing.

Preliminary Matter #3

The landlord withdrew her application for a monetary order for these items: 1) the move in and move out fees of \$100.00; 2) costs of developing pictures of \$50.25; and 3) bank (N.S.F) charges of \$21.00. The landlord also withdrew her application for an order of possession as the tenant had moved out on March 21, 2009. I therefore dismiss the landlord's application in these regards.

Issues to be Decided

Whether the landlord is entitled to a monetary order for loss of income for the period from March 15 to April 15?

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

Whether the landlord is entitled to an order to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

On March 2, 2008, the landlord collected a security deposit in the amount of \$760.00 from the tenant. On July 30, 2008, the landlord collected an additional pet damage deposit in the amount of \$400.00 from the tenant. The tenancy began on March 15, 2008 for a fixed term ending on March 14, 2009. On the same day, a move in condition inspection and report were completed by both parties. A monthly rent in the amount of \$1520.00 was payable in advance on the fifteenth day of each month. On February 28 and on March 10, 2009, the tenant emailed the landlord to request an extension of the tenancy till March 31, 2009. The landlord did not respond to these emails. On March 15, 2009, the landlord attended the rental unit and found the tenant to be still living there. On the same day, the landlord served the tenant with a notice to end tenancy for

unpaid rent. On March 21, the tenant moved out. On the same day, a move out condition inspection and report were completed by both parties. A move in and move out condition inspection report was submitted as evidence for this hearing.

Analysis

Issue #1 – Whether the landlord is entitled to a monetary order for loss of income for the period from March 15 to April 15?

The tenant claimed that the landlord had agreed to extend the tenancy till March 31, 2009. The landlord said that she had never agreed to tenant's request in this regard. I find no evidence to confirm that the landlord had agreed to extend the tenancy. In fact, an email dated March 10, 2009 from the tenant to the landlord ended with, "Please respond to this e-mail tomorrow or you want me to assume as accepted by silence". Based on the above, I find that there was no agreement between the landlord and the tenant to extend the tenancy till March 31, 2009.

The landlord is claiming for loss of income for the rental period from March 15 to April 15 in the amount of \$1520.00. The landlord said that she started advertising to re-rent the unit immediately after the tenant moved. Several ads were submitted as supporting evidence. The landlord was able to re-rent the unit for April 15. I find that the tenant should reasonably have known that the landlord could not re-rent the unit while she was still in residence. I also find that the landlord has tried to mitigate her loss of income. I therefore allow a claim for \$1520.00.

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

Cleaning

The landlord is seeking recovery of \$400.00 for 16 hours of cleaning. The tenant acknowledged that when she moved out of the rental unit, further cleaning was required. The tenant disputed the costs required to complete the cleaning. However, she was unspecific as to what she thought the required amount of time or costs for cleaning should be. Rather, she referred to the move out condition inspection report which states that the unit was in "fair" condition. Based on the above, I allow 50% of the total claim for an amount of \$200.00.

Bathroom

Both parties agreed that 1) bathroom wall above the light fixture was burned and the paint was peeling; and 2) the light fixture in the bathroom was emitting too much heat and therefore caused such damages. The tenant said that she did not notify the landlord of this problem until the move out condition inspection. Based on the above, I find that the tenant was negligent in failing to inform the landlord of the problem and that this problem eventually resulted in damages to the bathroom wall. Accordingly, I also find the tenant to be responsible for the costs of repairing the bathroom wall. However, I find the tenant's responsibility not to include any repair that might be required for the light fixture or related electrical system.

The landlord is seeking recovery of \$165.00 for three hours of work in repairing the "bathroom" but she was unspecific as to whether such work was for repairing the wall, the light fixture, or the related electrical system. Based on the above and considering the landlord's further claim for repainting the unit that includes the bathroom, I dismiss the landlord's claim for the bathroom repair.

Repairing and Repainting Walls

The landlord said that the unit was freshly painted before the tenant moved in and when the tenant moved out, the walls throughout the unit were damaged and

needed repair and repainting. The tenant did not dispute that she had caused damages to the bedroom wall, living room and dining room walls and that these walls needed to be repaired and repainted. The tenant also did not dispute the landlord's description of the damages to the kitchen wall. Based on my earlier finding of the tenant being responsible for the damages on the bathroom wall, I find the landlord to have proven that the tenant has caused damages to the walls throughout the unit.

The landlord is claiming for costs of 11 hours of labor for repainting the unit in the amount of \$605.00 and costs of paint in the amount of \$183.26. The tenant thought the costs of repair and repainting were high but she was unspecific as to what the required time and costs should be. I find that landlord's claim of \$788.26 for repainting the unit to be reasonable. However, having considered the "wear and tear" factor of this one year tenancy, I allow a claim of 80% of the total claim for an amount of \$630.60.

Blinds

Both parties agreed that 1) a blind at the sliding door was damaged and required repair; and 2) all of the blinds in the unit needed cleaning.

The landlord is claiming for \$106.40 as costs for repairing one blind and cleaning all of the blinds. The tenant made no submission with respect to these costs. I find that landlord's claim of \$106.40 for repairing and cleaning the blinds to be reasonable and I allow a claim for this amount.

Conclusion

Based on the above, I find that the landlord has established a claim of \$1520.00 in loss of income and \$937.00 as costs incurred in addressing the damages. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the

landlord retain the security deposit and interest of \$769.50 and pet damage deposit and interest of \$402.54 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1284.96. This order may be filed in the Small Claims Court and enforced as an order of that Court.