DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with a cross applications by the parties. The tenant made an application for a monetary order for the amount of the security deposit, applicable accrued interest and double the security deposit. The landlord made an application for a monetary order for the outstanding utility charges and costs incurred in addressing the damages.

Issues to be Decided

1. Whether the tenant is entitled to a monetary order for the amount of the security deposit, applicable accrued interest and double the security deposit?
2. Whether the landlord is entitled to a monetary order for the outstanding utility charges and costs incurred in addressing the damages?

Background and Evidence

The tenancy began on April 1, 2008. The tenant paid a security deposit of $600.00 on November 8, 2007. Prior to moving into the unit, the tenant lived for 3 months in a smaller unit in the same house. When the tenant moved in, the unit was 3 months old. The tenancy ended on December 15, 2008.

Analysis

Issue #1 – Whether the tenant is entitled to a monetary order for the amount of the security deposit, applicable accrued interest and double the security deposit?

The tenant provided the landlord with his written forwarding address sometime before January 16, 2009 and on January 16, he re-confirmed his forwarding address in an email to the landlord. The landlord has not returned the security deposit or applied for dispute resolution until February 27.

Section 38 of the *Residential Tenancy Act* requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. I find that the tenancy ended on December 15, 2008, and that the tenant provided his forwarding address in writing on or before January 16, 2009. I further find that the landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

I find that the tenant has established a claim for the security deposit of $600.00, accrued interest of $10.35, and double the base amount of the security deposit in the amount of $600.00, for a total of $1210.35.

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

The landlord is seeking recovery of the following outstanding utility charges and costs incurred in addressing the damages.

Outstanding Utility Charges

Both parties agreed that 1) the utility charges for the whole house for the period from August 2 to December 15 was $2488.41 and 2) the tenant has not paid his portion of the utility charges for this period.

The landlord gave the following evidence regarding the outstanding utility charges. As stipulated by the tenancy agreement, the tenant is responsible for 50% of the utility charges for the whole house. For the period from April 15 to August 1, the tenant had paid only 25% of the utility charges for the whole house but they are not claiming for the balance owing for this period. The utility charges for the whole house for the period from August 2 to November 30 are $1872.51 and the tenant's portion should therefore be $936.25. The utility charges for the whole house for the month of December are $599.70 and since the tenant moved out on December 15, his portion should therefore be $145.05. The landlord further explained that the house consists of 3 units; the tenant's unit is 1600 square feet whereas the other two units are 800 square feet each; the tenant's unit has a gas fireplace and a hot tub; and the tenant's unit has 4 occupants whereas the smaller units each have two occupants.

The tenant maintained that he should only be responsible for 25% of the utility charges for the whole house for these reasons. The landlord had agreed to a reduction of his portion of the utility charges to 25% and there are 3 units in the house. The tenant agreed that his unit was approximately 1600 square feet and one of the smaller units he had lived in was approximately 800 square feet. He contended however, that all of the units have the same appliances and that the smaller units need more heat as they are located on the lower floor.

A copy of the tenancy agreement dated November 8, 2008 signed by both parties was submitted as supporting evidence for this hearing. I note that page 2 of this tenancy agreement states that the tenant is responsible for 50% of the water, electricity and heat. Based on the above, I find that the tenant is responsible for 50% of the utility charges for the whole house. Accordingly, I also find that the landlord has proven the outstanding utility charges to be $1081.30 and I allow a claim for this amount.

Blind Replacement

The landlord gave the following evidence regarding a blind in a bedroom. After the tenant moved out, he found the strings of the blind to be damaged and the slabs of the lower half of the blind to be stored in the closet. The landlord submitted two photos showing such damages. He also submitted an email dated December 18. In this email, the landlord's wife writes to the tenant, "As for the house, we will be ordering a new blind to replace the broken one in the queen bedroom".

The tenant said that the blind was working fine during the tenancy and there was no damage to it at the end of the tenancy. He contended that on December 15, the landlord's wife and the cleaning personnel had cleaned the unit and damaged the blind.

Based on the photos that show substantial damages to the blind, I find unlikely that the landlord's wife and the cleaning personnel had caused the damages. Accordingly, I also find that such damage had occurred during the tenancy. The tenant is therefore responsible for the cost incurred in addressing such damages.

The landlord is claiming $200.00 as cost for replacing the blind. In support of his claim, the landlord submitted an invoice from Z.K. dated January 22, 2009 for $200.00 and a "cashed" check dated January 22, 2009 made payable to Z.K. for $200.00. The landlord said that Z.K. was the original supplier of all of the blinds in the unit. He also said that the existing blind was made of 2 inch PCB plastic slabs.

The tenant disputed the replacement cost and submitted a pricing for a one inch aluminum blind in the amount of $49.00. He also contended that the invoice was not credible as it shows neither a detailed description nor tax.

The landlord's assertion that the existing blind was made of 2 inch plastic slabs was not disputed. Based on the above, I find the tenant's pricing of a one inch metal blind not to be an accurate comparable and I have therefore not relied upon such evidence in reaching my decision. I have also considered the invoice and the "cashed" check submitted by the landlord. Based on all of the above, I find that the landlord has proven the cost of replacing the blind to be $200.00 and I allow a claim for this amount.

Cable Box Replacement

The landlord said that the front right corner of the cable box had melted during the tenancy and he is claiming the cost for replacing this cable box. In support of his claim, the landlord submitted 2 photos showing the damage and an invoice dated April 16, 2009 from Mascon Cable System for the amount of $446.88. The landlord gave the following evidence regarding the damage. The cable box was located in a built-in cabinet above the fireplace. Someone must have pulled it out from the cabinet and the heat of the fireplace had melted part of the front portion. The two other units in the house have the same design and their cable boxes have had no problem. Although the front right corner of the cable box was damaged, it was still working. But he phoned the cable company to send a similar model to replace the damaged cable box.

The tenant gave the following evidence regarding the damage. The damage did occur during the tenancy. The damage was caused by faulty design as the cable box was located too close to the fireplace. The damage was also the result of "wear of tear" of his 6 months tenancy. The landlord did not attempt to repair the damage and the replaced model was a more costly one than the existing cable box.

The landlord's assertion that all 3 units in the house have the same design and location for their cable boxes was not disputed. The tenant was living in a

smaller unit in the same house for 3 months prior to moving into the unit in dispute. I note that no evidence was adduced to indicate that there has been any similar damage to the cable box in this smaller unit or any other unit in the building. Based on the above, I find that the tenant had caused the damage to the cable box. I have considered that there is insufficient evidence from both parties to prove the model of the existing cable box. As well, I have considered that the cable box was still working and that the damage was a cosmetic one. I therefore allow 20% of the claim for the amount of $89.37.

Hot Tub Repair

The landlord said that the tenant had turned off the hot tub switch on the breaker panel, thus causing the pipes to be frozen and broken. He is claiming $367.72 for repairing such damages. In support of his claim, the landlord submitted an invoice from Mountain Water Works Ltd. dated December 31, 2008. The landlord gave further evidence regarding the hot tub repair. After the tenant moved out, he learned from the repair company that during the tenancy, the tenant had called them to repair the hot tub and they came to the unit to start the repair. Later, the repair company gave the invoice to the tenant but he refused to pay. Hence, the repair company gave the invoice to the landlord.

The tenant acknowledged that there were damages to the hot tub. But he contended that he was only responsible for maintaining the hot tub but not for repairing it. He denied having turned off the hot tub switch on the breaker panel and maintained such hot tub damages are common in cold weather. He also acknowledged that during the tenancy, he had contacted Mountain Water Works to repair the hot tub and he had received an invoice from them. He explained that he considered the damage of the hot tub to be an emergency repair, therefore he contacted the repair company immediately.

Both parties agreed that that pipes of the hot tub were frozen and broken. The landlord maintained that such damages were caused by the tenant turning off the hot tub switch on the breaker panel. The tenant denied having turned off the switch and maintained that such damages were common with hot tubs in the cold weather. I find that there must be mechanisms to maintain the hot tub so that the pipes would not be frozen and broken in cold weather. Otherwise, no one would install hot tubs in areas with cold weather. In this case, the tenant had acknowledged that he was responsible for maintaining the hot tub. I find that he had failed to maintain it in a fashion so that its pipes would not freeze up and become broken in the cold weather. Accordingly, I also find that the tenant is breach of a material term of the tenancy agreement and is therefore responsible for the costs of repairing the hot tub damages. I allow a claim for $367.72.

Conclusion

As for the monetary order, I find that the tenant has established a claim for the security deposit of $600.00, accrued interest of $10.35, and double the base amount of the security deposit in the amount of $600.00, for a total of $1210.35. I also find that the landlord has established a total claim for $1740.43 comprised of $1081.34 in outstanding utility charges and $659.09 as costs incurred in addressing the damages. As both parties have established a monetary claim, I dismiss their application for the recovery of the $50.00 filing fee. I grant the landlord an order under section 67 for the balance due of $530.08. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 2, 2009.