

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 an application by the landlord for a monetary order and an order to retain the security deposit in partial 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 entitled to a monetary order as requested?

Background, Evidence and Analysis

The parties agreed that the tenancy began on May 1, 2007 and ended in November 2008. An \$850.00 security deposit was paid on April 22, 2007. The parties completed a condition inspection of the rental unit together at the beginning of the tenancy and generated a Condition Inspection Report at that time to indicate the condition of the rental unit. Although the parties had agreed upon a time to meet at the end of the tenancy to perform a move-out condition inspection, the tenants forgot about the appointment. A second appointment was not set up and no condition inspection report was generated at the end of the tenancy.

I address the landlord's claims and my findings around each as follows.

- [1] **Cleaning fee.** The landlord claims \$250.00 as the return of a cleaning fee paid to the tenants. At the beginning of the tenancy, the parties agreed that the rental unit had not been sufficiently cleaned and the landlord agreed to reduce the tenants' rent for the first month by \$250.00 to compensate them for the cleaning they had to perform. The landlord now seeks to recover that fee as she claims that the tenants "left the house in a worse state when they moved out." I find that the parties made a contractual arrangement to compensate the tenants for the time they had to

spend cleaning the rental unit at the beginning of the tenancy and that the landlord may not now undo that contract. The contract was made and fully performed in May 2007 and may not now be rescinded. The landlord's claim for recovery of the cleaning fee is dismissed.

- [2] **Unpaid rent.** The landlord claims \$1,700.00 in unpaid rent for the month of September 2008. The tenant testified that it was possible that the post-dated cheque for September which was given to his landlord had not been cashed, but he had not confirmed this against his own banking records. When a landlord alleges that rent has not been paid, the burden shifts to the tenant to prove that rent has been paid. I find that the tenants have not proven that they paid rent in September 2008 and accordingly I award the landlord \$1,700.00 for rent for that month.
- [3] **Repairs.** The landlord seeks to keep the damage deposit in compensation for repairs which she claims were needed as a result of damage caused by the tenants. The landlord identified the following problems with the rental unit:
- a. **Fireplace.** The landlord testified that the tiles on the fireplace were missing at the end of the tenancy. The landlord entered into evidence a photograph showing that the tiles on the fireplace were all intact at the beginning of the tenancy, although it is clear that at least one tile was crooked. The condition inspection report shows that at the beginning of the tenancy there was a cracked tile and the fireplace was noted as being in "fair" condition. The landlord testified that at the end of the tenancy the tiles were missing. The landlord was unable to find matching tiles and received a quotation over the telephone for \$750.00 to re-tile the fireplace. The tenant testified that the tiles had not been installed properly and that as a result, after a period of approximately one year, the tiles fell and broke. The tenant did not save any of the broken tiles as they would be useless. In order for the landlord to be successful on this claim, she must prove that the tiles were missing and/or broken due to the tenants' action or negligence. I find that the landlord has failed to prove that the tenants caused the tiles to break. It is clear that there was a problem with at least one tile at the outset of the tenancy and I find that

it is entirely possible that further problems could have developed without any action on the part of the tenants. Further, the landlord did not submit written documentation of the cost of repairing the tiles. Even if the tenants had been found liable for the damage, I would have found that the landlord failed to prove the quantum of her claim. The claim for the cost of repairing the damage to the fireplace is dismissed.

- b. **Door knobs.** The landlord testified that at the end of the tenancy, two doorknobs were not working, with the effect that one could be trapped in a room unable to use the doorknob open the door. The landlord testified that a carpenter had quoted \$50.00 as the cost of replacing the doorknobs. The tenant testified that the doorknobs were fully functional throughout the tenancy. I find that the landlord has failed to prove her claim. The landlord has not provided supporting evidence such as photographs and as the tenant has disputed that the knobs were broken, I find that the landlord has not proven her claim on the balance of probabilities. Again, the landlord failed to provide written evidence of the quantum of her claim and therefore the claim would have been dismissed even if the landlord had proven liability. The claim for the cost of replacing doorknobs is dismissed.
- c. **Towel rack.** The landlord testified that at the end of the tenancy a towel rack was loose on the wall. The landlord acknowledged that there would be no cost to the repair and accordingly I dismiss the landlord's claim for towel rack repairs.
- d. **Wall damage.** The landlord testified that at the end of the tenancy there were a number of scratches and marks on the walls and that the tenants left a piece of corkboard on one of the walls. The landlord testified that she had not estimated the cost of repairs. The tenant testified that a number of scratches on the walls were there when they moved in and acknowledged having left behind the corkboard. The landlord did not know when the interior of the rental unit had last been painted, but the parties agreed that house was built in or about 2003. The landlord purchased the property in 2007. I find that the landlord has failed to prove that the tenants caused damage to the walls

beyond reasonable wear and tear. The corkboard appears to be easily removed by removing the one screw which holds it in place and this and the other damage does not, in my opinion, extend beyond reasonable wear and tear. Again, the landlord failed to provide written evidence of the quantum of her claim and therefore the claim would have been dismissed even if the landlord had proven liability. The claim for the cost of repairing walls is dismissed.

- e. **Floor scratches.** The landlord testified that the tenants scratched hardwood floor in the dining room and theorized that the damage could have been caused by the tenants' dog. The landlord did not provide photographs of any damage and claimed that it would be difficult to capture the damage on film. The landlord did not provide a written or even a verbal estimate of the cost to repair the damage. The tenant testified that the people who had lived in the rental unit prior to the beginning of this tenancy had a large dog who could have caused the damage to the flooring. I find that the landlord has failed to prove that the tenants caused damage which is beyond the scope of reasonable wear and tear. Again, the landlord failed to provide written evidence of the quantum of her claim and therefore the claim would have been dismissed even if the landlord had proven liability. The claim for the cost of repairing scratches to the floor is dismissed.
- f. **Dishwasher repair.** The landlord testified that the tenants damaged or failed to maintain the dishwasher in the rental unit. The landlord testified that two of the rollers on the trays in the dishwasher were not working properly and had to be replaced at a cost of \$40.00. The landlord did not submit a copy of the invoice into evidence. The landlord did not know how old the dishwasher was. The tenant testified that during the tenancy the rollers came off occasionally and he would put them back on and the dishwasher would operate properly. The mere fact that the dishwasher requires repair during or after the tenancy does not lead to the presumption that the tenants caused damage to the dishwasher. I find that the landlord has failed to prove that the tenants caused the damage to the dishwasher and I find that the dishwasher

required repair due to heavily used parts having worn down with age. I therefore dismiss the landlord's claim for the cost of the repair.

- [4] **Time and Travel.** The landlord seeks an award of \$300.00 to compensate her for the time preparing for this arbitration, time spent contacting contractors regarding repairs and the gas used to travel in connection with the rental unit. The tenants cannot be held responsible for the landlord's cost of doing business. The value of the landlord's time spent performing her duties or the cost of her gas should be built into the rent charged to the tenants; it is not recoverable in this action and the claim is dismissed.
- [5] **Photocopying, supplies and registered mail.** The landlord seeks an award of \$33.14 for the cost of copying photographs, documents, making photo CDs and for tape as well as an unspecified amount for registered mail costs. Under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fee. This claim is dismissed.
- [6] **Filing fee.** The landlord seeks to recover the \$50.00 filing fee paid to bring this application. I find that the landlord is entitled to recover the fee and award the landlord \$50.00.

In summary, the landlord has been successful in her claim for unpaid rent and recovery of the filing fee. The remainder of her claims are dismissed.

Conclusion

I find that the landlord has established a claim for \$1,750.00. I order that the landlord retain the deposit and interest of \$871.75 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$878.25. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 08, 2009.