



Dispute Resolution Services

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

Decision

Dispute Codes: MND MNSD MNDC FF O

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for a monetary order and an order to retain the security deposit in partial compensation of the monetary claim. The tenant applied for recovery of the security deposit and a monetary order for compensation or loss under the Act. Both the landlord and the tenant participated in the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on December 15, 2005. The rental unit, a condo, was brand new at the beginning of the tenancy. The monthly rent at the beginning of the tenancy was \$1400, and the tenant paid the landlord a security deposit of \$700. On June 1, 2007 the landlord increased the rent to \$1500. On March 1, 2009 the landlord then increased the rent from \$1500 to \$1590. The landlord had the condo listed for sale, beginning September 5, 2008. The tenant moved out on April 1, 2009. On that date the landlord and tenant conducted a move-out inspection, but the tenant refused to sign the move-out inspection report. The new owners took possession of the condo on April 1, 2009. The landlord applied to keep the security deposit on April 8, 2009.

The evidence of the landlord on her application was as follows. The tenant left the condo in poor condition at the time of her move out. There was an attempt to clean the carpets, but they were still stained. The walls were dirty and gouged, light bulbs were not replaced, there were snags in the carpet and the seams were pulled out, part of a baseboard was missing, and there was a hole in the pocket door of the storage area, where the tenant had installed cabinets.

The landlord had to reduce the listing price for the condo twice, because of the poor condition of the unit. The landlord provided a letter from her realtor, in which the realtor states that the condo needed new flooring, repairs to the walls in several places, and complete repainting, and for this reason the sale price of the condo was significantly lower than its original listing price. The landlord has claimed \$700, equal to the amount of the security deposit.

The tenant's response to the landlord's application was as follows. The landlord never painted the walls during the tenancy, and it was the landlord's responsibility to do so. There was one tear in the carpet, which was created by the landlord's vacuum cleaner. There were no gouges in the walls. The tenant acknowledged that she did remove part of the baseboard. She also acknowledged that there was some general wear and tear, and that there were some stains in the carpet because of her cat. The landlord was aware that the tenant had a cat but chose not to take a pet deposit. The tenant had the suite professionally cleaned before she moved out. The landlord had the condo on the market for eight months, and the reason that the landlord could not sell it for the original listing price was that the economy tanked. The tenant does not believe that the landlord is entitled to retain the security deposit.

The tenant's evidence on her application was as follows. The tenant seeks recovery of the overpayments of rent, as the increases were beyond the permissible amount. The tenant also seeks reimbursement for her cleaning costs, and recovery of her security deposit. The landlord did not deny the amounts or dates of the rent increases.

Analysis

In regard to the landlord's application, I cannot find that the landlord suffered any specific loss due to the tenant's damages to the condo. The landlord had already sold the unit at the time that the tenant was moving out, and any cost to repaint or replace flooring would have been a cost incurred by the new owners, not the landlord. The landlord was unable to establish any specific dollar figure for any of the damages leading directly to a reduction in the listing price, as opposed to a decline in the real estate market or other factors. I therefore must dismiss the landlord's application. As the landlord's application was not successful, she is not entitled to recovery of her filing fee.

In regard to the tenant's application, I find as follows. A landlord may only increase rent within the prescribed amount, and the tenant's payment of an amount that exceeds the allowable increase does not constitute a written agreement to a rent increase in that amount. In 2007, the prescribed amount for rent increases was 4 percent, and in 2009 the prescribed amount is 3.7 percent. The increases in this case significantly exceeded the prescribed amounts, and the tenant is therefore entitled to recovery of the overpayments, totaling \$2190.

As the landlord's application to retain the security deposit was not successful, the landlord must also return the security deposit and applicable interest in the amount of \$724.77. Because the landlord applied to retain the security deposit within 15 days of the end of the tenancy, the legislative provisions to double the security deposit do not apply in this case.

I find that the tenant is not entitled to reimbursement of her cleaning costs, as it was the tenant's responsibility to clean the unit before moving out. As the tenant's application was partially successful, the tenant is entitled to partial recovery of her filing fee in the amount of \$50.

Conclusion

The landlord's application is dismissed.

I grant the tenant an order under section 67 for the balance due of \$2964.77. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 15, 2009.