

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNR, MND, MNSD, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repair to the rental unit, loss of income and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for costs incurred to repair the rental unit, for loss of income and for the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on February 21, 2009 and ended on April 19, 2009. The rent was \$725.00 at the start and later increased to \$765.00 to include the tenant's girlfriend. Rent was due in advance on the 20th of each month. The tenant paid a security deposit in the amount of \$362.50.

The relationship between the landlord and tenant deteriorated due to several factors starting with the tenant's girlfriend staying overnight and doing laundry in the rental unit. This issue was resolved by both parties entering into a new tenancy agreement to include the tenant's girlfriend, at an increased rent.

The tenant complained to the landlord regarding a breach of his privacy, the landlord's dogs getting into his garbage and urinating on his possessions, lack of adequate heating and hot water, people sleeping in the storage room and restricted laundry.

The landlord responded to these complaints by agreeing to rectify the problem with the hot water supply and provide the tenant with a locking garbage can which is dog proof.

Due to the ongoing problems, in the last week of March, the landlord approached the tenant with a request to sign a mutual end to tenancy. The landlord provided the tenant with some written terms one of which stated "*by signing this agreement both parties waive the rights to sue for anything regarding this tenancy*" The tenant stated that from this term, he understood that he might be waiving his rights to the return of the security deposit. He agreed to end the tenancy but refused to sign the agreement. The tenant advised the landlord that he would sign the agreement on the day he moved out after he received his security deposit. The landlord advertised the availability of the unit and started showing it to prospective tenants. The tenant has filed a note from the landlord asking him to have it ready for viewing on April 16, 2009.

The tenant testified that in the first week of April, he got a female cat from the SPCA with the landlord's permission. The cat was female, spayed and used a litter box. The tenant stated that he returned the cat to the SPCA, a week later. The landlord agreed that she had discussed the possibility of the tenant keeping a cat, but stated that the cat was living in the unit for about five weeks which resulted in a strong odour inside the rental unit and stains of cat urine on the carpet. The landlord also stated that the cement walls had a foul odour and she had to paint the walls and steam clean the carpet twice, to eradicate the odour. The landlord filed a photograph showing the cat, the cat food and the litter box.

On April 19, 2009, both parties conducted a move out inspection. The landlord stated she pointed out some scratches to the railing and door and some missing light bulbs and the tenant agreed that he was responsible to rectify the damage. The tenant stated that the landlord told him "not to worry about it". The landlord stated that she advised the tenant that she would mail the security deposit within two weeks to his forwarding address. The landlord did not document this inspection or her conversation with the tenant regarding the damage, the tenant's consent to deductions and the return of the security deposit.

The landlord has filed photographs showing the missing light bulbs, scratches to a railing and gate, stained carpet, damage to a wall, a dirty stove and strewn garbage. The landlord is claiming \$200.00 for painting, \$200.00 for carpet cleaning, \$51.95 to clean the stove and replace one burner and \$765.00 for loss of income for April 20 to May 20, 2009. The landlord has also filed a receipt for the above work in the amount of \$451.95.

Analysis

Based on the testimony of both parties, I find the tenant and landlord had mutually agreed to end the tenancy and therefore the landlord is not entitled to her claim of loss of income for the month following the end of the tenancy.

The testimony of the tenant and the landlord are conflicting with regard to the move out inspection. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord conducted the move out inspection but did not document the consent of the tenant to retain all or part of the security deposit. The tenant stated that he agreed that he was responsible for the scratches to the railing and door from moving furniture out of the suite, but the landlord has not claimed repairs to these items. The deficiencies that the landlord is claiming were not brought to the tenant's attention during the move out inspection.

The landlord stated that the painting and the carpet steaming were done to remove the odour of the cat. However, the landlord did not mention the odour or the condition of the walls and carpet to the tenant during the move out inspection and since the tenancy lasted for two months only and the tenant stated that he had cleaned the rental unit; I find that the landlord is not entitled to the cost of painting and carpet cleaning.

The landlord stated that the stove was five years old and admitted that she did not notice that a part of the stove was dirty at move out inspection. The tenant stated that the stove was cleaned prior to moving out. I find that replacing a burner could be a result of wear and tear and therefore is not the responsibility of the tenant.

Overall I find that the landlord has not proven her case and is therefore not entitled to the filing fee. I find that the tenant is entitled to the return of the security deposit in full in the amount of \$362.50 and I hereby order that the landlord return the security deposit of \$362.50 to the tenant.

Conclusion

The landlord's claim for a monetary order is dismissed and I order the landlord to return the entire amount of \$362.50 to the tenant, at his forwarding address.

Dated July 24, 2009.

Dispute Resolution Officer