

Dispute Codes:

MNR

MND

MNSD

MNDC

FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed evidence and the Hearing proceeded on its merits.

Issues to be Decided

This is the Landlord’s application for a Monetary Order for unpaid rent, damages to the rental unit and compensation for damage or loss under the Act, Regulation or tenancy agreement; to keep the security deposit paid by the Tenant; and to recover the filing fee from the Tenant for the cost of filing the application.

Background and Evidence

The rental unit is the lower floor of a house. The Landlord resides in the upper part of the house. There was no written tenancy agreement. The Tenancy started in May of 2007 and ended on September 1, 2008. The monthly rent was \$800.00 per month, due on the first day of each month. The Tenant paid a security deposit to the Landlord in the amount of \$350.00 a week prior to the Tenant moving in the rental unit, but neither party could remember what day it was paid. There was no move-in or move-out inspection done.

Landlord’s testimony and evidence

The Landlord gave the following testimony:

- The Landlord testified that the Tenant had not paid any rent for June, July, September, November and December, 2007. The Landlord testified that the Tenant had only paid \$400.00 towards rent in March, 2008, and had not paid any rent for April, May, June and July, 2008, and only \$400.00 for August, 2008.
- The Landlord later testified that the Tenant had not paid rent for September, October and December 2007, and January, April, May and June, 2008, and only half of the rent for February, 2008 and July, 2008.
- The Landlord testified that he had to paint the rental unit when the Tenant moved out because she smoked in the building. The Landlord testified that it cost the Landlord \$600.00 to paint, including \$150.00 for 3 gallons of paint and \$450.00 for 18 hours of labour at \$25.00 per hour.
- The Landlord testified that the Tenant left a lot of garbage in the yard, and it cost him \$100.00 for garbage removal.
- The Landlord testified that the Tenant did not shampoo the carpets before she left, and provided an invoice in the amount of \$226.23 for the cost of shampooing the carpets. The Landlord testified that the carpet was not perfect when the Tenant moved in, but definitely needed cleaning when she moved out. The Landlord stated that he would have to replace the carpet.
- The Landlord testified that he and the Tenant had a romantic relationship during the tenancy and that he had paid for a number of things on the Tenant's behalf, including: a course; a trip; car payments; hair replacement; and a vet bill for the Tenant's pet.

Tenant's testimony and evidence

The Tenant gave the following testimony:

- The Tenant denied that she owed the Landlord any rent. The Tenant testified that the Landlord had told her that any rent she owed could be made up by her cleaning his house and maintaining the property. The Tenant testified that she

planted a new garden; mowed the lawns; and cleaned the Landlords suite and that the Landlord had agreed to accept her labours in lieu of paying rent.

- The Tenant testified that she did not smoke in the building, only outside in the yard.
- The Tenant testified that the carpets were horrible when she moved in, with huge black stains. The Tenant testified that she tried bleach to remove the stains, but ended up putting down area rugs. The Tenant testified that the Landlord told her not to bother shampooing the carpet because he was going to have to replace it.
- The Tenant testified that the only garbage she left in the yard was in a brand new garbage can that the Tenant had bought. In addition, there were 4 full boxes of recycling.
- The Tenant testified that she helped the Landlord cover his mortgage payment in August, 2008, when he was short of money, and that she deposited \$1615.00 directly into his bank account.

Analysis

The onus is on the Applicant to prove a monetary claim.

RE: Landlord's claim for unpaid rent

The Landlord's Application for Dispute Resolution discloses a claim for \$5,380.00 in unpaid rent. In his oral testimony, the Landlord first testified that the Tenant owed him a total of \$7,200.00. When I questioned him about the difference between his verbal testimony and the amount he had claimed on his Application, the Landlord gave further testimony that his claim for unpaid rent now amounted to \$6,400.00. The Landlord did not provide documentary evidence to prove his claim.

The Tenant disputed owing the Landlord any rent at all, and testified that she provided landscaping services, yard work and house work in lieu of rent, in accordance with an oral agreement she had with the Landlord.

It is impossible for me to determine what, if any, rent the Tenant owes the Landlord because of their personal relationship. There was a total lack of credibility on the Landlord's part, due to inconsistencies in the Landlord's testimony and evidence.

The Landlord has not proven his claim for unpaid rent, and I dismiss this portion of his claim without leave to reapply.

RE: Landlord's claim for damages

The Act requires a landlord to perform a move-in and move out inspection with a tenant. In this case, there was no move-in or move-out inspection done and therefore no documentation to prove the state of the rental unit when the Tenant moved in, or when she moved out.

The Tenant denies causing smoke damage to the walls in the rental unit. The Landlord did not provide evidence of smoke damage to the rental unit and no evidence of when the walls were last painted.

The Tenant testified that the carpet was in need of replacing when she moved in, and that the Landlord had told her not to bother shampooing the carpet, because he was going to have to replace it. The receipt provided by the Landlord for carpet shampooing does not indicate whether the services were provided in the upper portion or the lower portion of the house.

The Tenant testified that she left one can of garbage in the yard and 4 boxes of recyclable material. I accept this was the only debris left behind by the Tenant and I do not find this to be excessive. The Landlord claims \$100.00 for removing the garbage, but did not provide a receipt for garbage removal.

The Landlord has not proven his claim for damages and I dismiss this portion of his claim without leave to reapply.

The Landlord has not been successful in his application and is not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

The Landlord's claim for a monetary order for unpaid rent and damages is dismissed, without leave to reapply.

The security deposit remains available for application to either party, in accordance with the provisions of the Act.

Dated: July 30, 2009.
