



Dispute Resolution Services

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

Decision

Dispute Codes: MND, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. 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 claimed?

Background and Evidence

The parties agreed that the tenancy began on March 15, 2008 at which time a \$600.00 security deposit was paid and ended on or about March 15, 2009. Condition inspection reports were not completed either at the beginning or the end of the tenancy. The landlord testified that the unit was new at the time the tenant moved in and that the tenant caused damage to the unit during the tenancy. Specifically, the landlord testified that there were more than 25 burns on the deck. The landlord submitted an invoice showing that it would cost \$1,483.13 to replace the vinyl decking. The landlord further testified that the tenant put a hole in a closet door. The landlord submitted an invoice showing that it cost \$84.00 to replace the closet door. The landlord provided photographs of both the deck and the door.

The tenant denied having caused any damage to the rental unit and suggested that the landlord's photographs may have been from a different rental unit. The tenant suggested that he may not have been the first resident of this unit because he found dishes in the unit when he moved in. The tenant provided photographs as well, including a photograph of the deck in which a flower pot covered the area in which the landlord's photograph showed the largest burn.

The landlord testified that the reason the tenant found dishes in the rental unit was

because the unit had been rented as a fully furnished suite and the dishes were provided as part of the furnishings.

Analysis

As a preliminary matter, I find that the landlord has extinguished his claim against the security deposit. The landlord is required by sections 23 and 35 to inspect the unit together with the tenant at the beginning and at the end of the tenancy. Sections 24 and 36 provide that if a landlord fails to perform condition inspections and generate condition inspection reports, the landlord has extinguished his right to claim against the security deposit. However, this does not prevent the landlord from making a claim against the tenant for damages.

Having reviewed the photographs provided by both parties, I find that the tenant caused damage to the deck of the rental unit. The tenant's photograph of the deck shows many of the same marks as are shown in the landlord's photographs, save the largest burn which is covered by the flower pot. I do not accept the tenant's testimony that the flower pot was not covering the burn on the deck. I find that the tenant must be held liable for the damage to the deck. I find that in addition to the large burn there were a number of other smaller burns which caused cosmetic damage. However, I do not accept that the landlord had to replace the entire deck surface and underlying membrane. I find that the damage caused by the tenant reduced the value of the deck and required a repair to preserve the waterproofing quality of the deck. I find that \$300.00 will adequately compensate the landlord for the required repairs and I award the landlord that sum.

The attempt of the tenant to cover up the burn on the deck has caused me to question his credibility. Although the tenant denied having caused further damage and suggested that the landlord had provided photographs of a different rental unit, I prefer the evidence of the landlord over that of the tenant as I have no reason to question the landlord's credibility. I find that the tenant caused damage to the closet door and must be held liable for the cost of repairing that damage. However, I am not satisfied that replacing the entire door was required. The damage is cosmetic in nature and reduced the value of the door but was not to an extent that the door required replacement. I find that \$25.00 will adequately compensate the landlord for the damage to the door and I

award the landlord that sum.

I find that the landlord is entitled to recover the cost of filing his application for dispute resolution and I award the landlord \$50.00.

I find that the landlord has established a claim for \$375.00 which represents \$300.00 for deck repairs, \$25.00 for door repairs and the \$50.00 filing fee. Although the landlord has extinguished his claim on the security deposit, under section 72(2)(b) of the Act I may order that the amount owed be deducted from the security deposit. I order that the landlord retain \$375.00 from the deposit and interest of \$607.18 in full satisfaction of the claim and I order the landlord to return to the tenant the balance of \$232.18. I grant the tenant an order under section 67 for \$232.18. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain \$375.00 from the security deposit and must return the balance of \$232.18 to the tenant forthwith.

Dated August 31, 2009.