

Decision

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

Introduction

This hearing dealt with the landlord's application for a monetary order as compensation for damage to the unit / site / property, unpaid rent, damage or loss under the Act / regulation or tenancy agreement, in addition to recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the 6 month fixed term of tenancy was from May 1 to October 31, 2009. Rent in the amount of \$2,900.00 was payable in advance on the first day of each month. A security deposit of \$1,450.00 and a pet damage deposit of \$200.00 were collected on April 9, 2009. A move-in condition inspection and report were completed on April 9, 2009.

There is an "Addendum" to the residential tenancy agreement which is dated and signed by the parties on April 23, 2009. The "Addendum" provides that in the event the tenants vacate the unit prior to the end of the fixed term of tenancy, the "moving allowance" (hereafter referred to as the "move-in allowance") in the amount of \$1,450.00 will be assessed against the tenants. It is understood that the move-in allowance in the amount of one half month's rent, was made available to the tenants at the outset of tenancy as an incentive to move into the unit. In effect, rent paid by the tenants for the first month of tenancy totaled \$1,450.00 instead of \$2,900.00.

By letter dated June 23, 2009, the tenants gave notice of their intent to end the tenancy effective July 31, 2009, which was 3 months prior to the end of the fixed term.

Subsequently, the tenants vacated the unit on July 24, 2009 and new renters took possession on July 25, 2009. As a "goodwill gesture" the landlord waived the provision in the residential tenancy agreement at clause # 3, whereby a fee of \$300.00 is assessed against the tenants in the event of "lease breaking."

A move-out condition inspection and report were completed on July 24, 2009. In concert with the move-out condition inspection, a one page "Agreement" was reviewed and signed by the parties. The "Agreement" documents the landlord's intention to claim costs in the total amount of \$1,680.00. This cost was comprised of \$130.00 for carpet cleaning, \$100.00 for painting and repairs to damage in a common area of the building, in addition to the move-in allowance of \$1,450.00. By way of manual notations on the "Agreement," the tenant disputes the proposed assessment of costs for painting and repairs, and the move-in allowance.

Prior to the hearing the landlord undertook to calculate the tenants' entitlement to repayment of the security and pet damage deposits, and this led to issuance of a cheque in favour of the tenants for \$581.25. This amount was calculated as the difference between the amount the landlord credited to the tenants (\$2,261.25) and the amount of the landlord's claim, as above (\$1,680.00). The landlord calculated the tenants' credit as follows:

\$1,450.00 – security deposit

\$ 200.00 – pet damage deposit

\$ 611.25 – 7 days of pro-rated reimbursement of rent for July

\$2,261.25

The landlord later amended the estimated costs for recovery shown in the original application in the amount \$1,680.00, to show actual costs, and updated the application to show the final claim for recovery as follows:

\$ 115.50 – carpet cleaning

\$ 157.50 – wall repair and painting

\$1,450.00 – move-in allowance

In addition to the \$50.00 filing fee, the total claim submitted by the landlord is therefore \$1,773.00.

While the tenants do not dispute the cost of carpet cleaning in the amount of \$115.50, all other aspects of the landlord's claim are in dispute.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the common area which required repair and painting after the end of tenancy, was not an area included for inspection on the move-in condition inspection report. The tenants dispute that they inflicted any damage to the common area either at the beginning or the end of tenancy. Further, there was no first hand witness account of the tenants inflicting any such damage on the common area. In the result, I dismiss this aspect of the landlord's claim.

Despite the difference in the understandings of the parties in regard to the disposition of the move-in allowance at the early conclusion of this tenancy, which was discussed at some length during the hearing, I find that the evidence supports the landlord's claim to entitlement to its recovery in the amount of \$1,450.00.

Setting aside for the moment the landlord's application to recover the filing fee, I find that the landlord has established a claim of \$1,565.50. This is comprised of \$115.50 for carpet cleaning and \$1,450.00 for the move-in fee.

Where it concerns the tenants' entitlement, I find that it amounts to \$2,304.80. This is comprised of \$1,450.00 for the security deposit, \$200.00 for the pet damage deposit, and \$654.80 for pro-rated recovery of rent for the 7 day period from July 25 to 31. The amount for pro-rated recovery of rent, which varies from the amount calculated by the landlord, is calculated as follows:

$\$2,900.00 \text{ (monthly rent)} \div 31 \text{ (days in July)} = \93.55 (per diem)

$\$93.55 \text{ (per diem)} \times 24 \text{ (number of days unit occupied by tenants)} = \$2,245.20$

$\$2,900.00 \text{ (monthly rent)} - \$2,245.20 \text{ (tenants' portion)} = \underline{\$654.80} \text{ (tenants' credit)}$

As the tenants have already received a cheque from the landlord for \$581.25, the credit balance in favour of the tenants is \$1,723.55 (\$2,304.80 - \$581.25).

Offsetting the respective amounts owed, I find there is a difference in favour of the tenants of \$158.05 (\$1,723.55 - \$1,565.50). As the landlord has not succeeded in the application for a monetary order, I dismiss the landlord's application for recovery of the filing fee, and I grant the tenants a monetary order under section 67 of the Act for \$158.05.

Conclusion

Following from the above and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenants in the amount of **\$158.05**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 20, 2009

Dispute Resolution Officer