

Decision

Dispute Codes: MNR, MND, MNSD, FF

Introduction

This hearing dealt with an application from the landlord for a monetary order as compensation for unpaid rent, compensation for damage to the unit, retention of the security deposit, and 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 original term of tenancy was from August 1, 2004 to January 31, 2005. Thereafter, tenancy continued on a month-to-month basis. Rent in the amount of \$1,090.00 was payable in advance on the first day of each month, and a security deposit of \$475.00 was collected on June 21, 2004. A move-in condition inspection and report were completed at the outset of tenancy.

By letter from the tenant to the landlord (stamped "Received" on July 31, 2009), the tenant gave notice of her intent to vacate the unit "before the 15th of August."

Subsequently, as a result of rent that remained unpaid when due on August 1, 2009, the landlord issued a 10 day notice to end tenancy for unpaid rent dated August 5, 2009. Following this the tenant vacated the unit on August 13, 2009. On this same date a move-out condition inspection was undertaken by the parties, however, the tenant declined to sign the move-out condition inspection report.

In the landlord's original application the request for a monetary order is comprised of loss of rental income for August, fee for late payment of August rent, replacement of a smoke detector, suite cleaning, replacement of light bulbs, repairs to walls, replacement

of the unit lock and keys, replacement of window screens, replacement of blinds, and recovery of the filing fee. However, by the time of the hearing, receipts submitted into evidence by the landlord for actual costs incurred vary from some of the particulars and estimated costs set out on the move-out condition inspection report, which comprised the basis of the original application. Further, during the hearing the landlord withdrew the application for carpet cleaning which had been included in the original application.

The tenant testified that she does not dispute the following costs being claimed by the landlord:

\$120.00 – replacement of window screens

\$185.00 – repair / replacement of siding

\$ 14.00 – replacement of light bulbs.

Total: \$319.00

As to the remaining claims, the landlord enclosed a photograph in support of the assertion that a smoke detector located in the basement was missing at the end of tenancy. The tenant disputes that there was ever a smoke detector in place at that location.

Photographs were also submitted into evidence by the landlord in support of the claim that extensive cleaning was required in the unit after the end of tenancy. In relation to this matter, in her written submission the tenant states, in part:

While the cleaning job was not perfect under the circumstances it was more than adequate.

The landlord's evidence also includes photographs and receipts in support of the claim for costs incurred for replacement of blinds. Further, notations on the move-out condition inspection report and photographs support the claim for costs associated with repairs to significant holes in walls.

Analysis

Section 45 of the Act speaks to **Tenant's notice** and provides in part, as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Clearly, the tenant's manner of ending the tenancy did not comply with the above statutory provisions.

Further, based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated August 5, 2009. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply to dispute the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Thereafter, as the tenant vacated the unit on August 13, 2009, the landlord withdrew the application for an order of possession which was included in the original application.

Following from all of the above, as the landlord was unable to re-rent the unit before the end of August 2009, I find that the landlord has established entitlement to loss of rental income for August. Pursuant to a provision in the written tenancy agreement, I also find that the landlord has established entitlement to a fee for late payment of rent for August.

Further to the above, based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has established miscellaneous entitlements to compensation as set out below.

- extensive cleaning was required as evidenced by photographs and notations made on the move-out condition inspection report;
- the missing toilet seat is noted on the move-out condition inspection report;
- the missing smoke detector in the laundry / storage room is noted on the move-out condition inspection report;
- missing blinds in the kitchen are noted on the move-out condition inspection report;
- finally, the move-out condition inspection report and photographic evidence support the need for repairs to significant holes in walls.

In summary, as for the monetary order, I find that the landlord has established a claim of \$1,987.53. This is comprised of the undisputed amount above of \$319.00, \$1,090.00 in unpaid rent for August 2009, a \$20.00 fee for late payment of August rent, \$270.00 for suite cleaning, \$18.46 to replace the toilet seat, \$55.07 to replace a smoke detector, \$120.00 to replace blinds, \$45.00 for repair of holes in walls, and recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit of \$475.00 plus interest of \$16.81, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,495.72 (\$1,987.53 - \$491.81)

Following is a summary of aspects of the landlord's claim which are hereby dismissed. On the move-out condition inspection report it is noted that 1 house key, 1 mail key and the garage remote were returned at the end of tenancy. However, as the move-in condition inspection report does not include any record of which keys or how many keys were provided by the landlord at the outset of tenancy, I must dismiss the landlord's claim for the replacement of lock(s) and key(s).

While "holes in walls" are noted in the move-out condition inspection report, and photographs support the existence of significant holes, I find there is insufficient evidence to support the full cost claimed for repair of \$130.00. Accordingly, I find that

the landlord has established limited entitlement to \$45.00 (3 hours x \$15.00/hour), as specified above.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$1,495.72**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 24, 2009

Dispute Resolution Officer