

Decision

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application from the landlord for a monetary order as compensation for damage to the unit, compensation for damage or loss under the Act, regulation or tenancy agreement, 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

A previous hearing was held in relation to a dispute between these same parties on August 6, 2009. That hearing was scheduled in response to an application by the tenants for return of double the security deposit, and recovery of the filing fee. In the result, a monetary order was issued in favour of the tenants for return of double the security deposit plus interest, in addition to recovery of the filing fee.

Pursuant to a written residential tenancy agreement, the original term of tenancy was from December 6, 2006 to December 31, 2007. Thereafter, tenancy continued on a month-to-month basis. Rent in the amount of \$1,675.00 was payable in advance on the first day of each month. A security deposit of \$840.00 was collected on December 4, 2006. A move-in condition inspection and report were completed by the parties on December 6, 2006.

By way of e-mail dated March 2, 2009, the tenants informed the landlord of their intent to vacate the unit at the end of March 2009. Subsequently, the tenants did indeed

vacate the unit by March 31, 2009. During the hearing there was no dispute between the parties that new tenants were found for the unit effective April 1, 2009.

The tenants acknowledge that they did not clean carpets at the end of their tenancy, which cover flooring in limited areas of the unit. Further, they acknowledge that they did not complete cleaning within the unit before vacating. However, the tenants deny any knowledge of or responsibility for a problem with the kitchen garburator which the landlord claims required unplugging at a cost of \$70.00. Neither are the tenants prepared to acknowledge responsibility for damage and cost associated with removal of a stain on a portion of the hardwood / laminate floor in the unit.

During the hearing the parties were argumentative and frequently spoke over one another. Agitation is felt by the landlord arising from the view that the tenants have been dishonourable in their dealings in regard to responsibility for cleaning and repairs, and dishonourable in their previous action to recover double the security deposit. In the result, the ability of the parties to achieve a broader resolution of the dispute than what was achieved in this hearing, was limited.

Analysis

As the disposition of the security deposit in this tenancy was previously decided in the decision dated August 6, 2009, that matter cannot be reheard. Therefore, I dismiss the landlord's application to retain the security deposit in partial satisfaction of the claim.

Section 45 of the Act addresses **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..

While notice given by the tenants to end tenancy did not comply with the above statutory provisions, neither did the landlord suffer any loss of rental income. Specifically, the tenants vacated the unit by March 31, 2009, and new renters took possession on April 1, 2009. It does not appear that the landlord has specifically applied for compensation for loss of rental income, and the foregoing points are set out simply for clarification and for the reference of the parties.

As for the landlord's claim for "Liquidated Damages," the written tenancy agreement makes provision for this at clause # 5 as follows:

If the tenant ends the fixed term tenancy before the end of the original term as set out in (B) above, the landlord may treat this Agreement as being at an end. In such event, the sum of \$950.00 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty. Liquidated damages covers the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

As previously stated, the original fixed term of this tenancy was from December 6, 2006 to December 31, 2007. Effective January 1, 2008, the fixed term tenancy became a month-to-month or periodic tenancy. Accordingly, at the time when the tenants gave notice and at the time when the tenancy ended, the fixed term of the tenancy had expired and a periodic tenancy was in effect. In the result, I dismiss the landlord's claim for liquidated damages, as these are only recoverable in the event of termination of the tenancy by the tenants "before the end of the original term..."

Section 35 of the Act speaks to **Condition inspection: end of tenancy**, and section 36 of the Act addresses **Consequences for tenant and landlord if report**

requirements not met. The parties presented different perspectives on the reason why a move-out condition inspection and report were not both completed. Related documentary evidence includes exchanges of e-mails between the parties. The parties also presented varied accounts of what verbal agreements may have been reached between them in regard to the condition of the unit at the end of tenancy and when / who would take responsibility for what. The fact remains that no move-out condition inspection report was completed and signed by the parties, and in relation to this, section 36(2) of the Act provides as follows:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35(2) [*2 opportunities for inspection*],
- (b) having complied with section 35(2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Where it concerns cost incurred by the landlord to remove a stain from the hardwood / laminate floor, as previously stated, there is no move-out condition inspection report. Photographic evidence is limited to one picture which I find is inconclusive as to revealing the extent of the damage. Further, as the parties were inclined to be argumentative they did not take an opportunity to achieve even a partial resolution of this aspect of the dispute. In the result, there is insufficient evidence to support the claim that repair to the floor was required as a direct result of this tenancy. I therefore dismiss the landlord's application for compensation for this particular cost.

Additionally, as there is insufficient evidence that the landlord incurred a \$100.00 cost for a move-out fee, I dismiss this aspect of the landlord's application.

Finally, in the absence of a move-out condition inspection report, there is no documentation which addresses any concern about the status of the garburator at the end of this tenancy. Neither is there any evidence that this was the subject of any conversation between the parties during a walk-through of the unit at the end of tenancy. Accordingly, I dismiss this aspect of the landlord's application.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a limited resolution. Specifically, the tenants agreed to make payment to the landlord as follows:

- \$ 75.00 for the cost of carpet cleaning;
- \$125.00 toward the cost of overall cleaning required in the unit;
- \$ 85.00 for the replacement of one fob

Total: \$285.00

As the landlord achieved partial success in this application, I find that the landlord is entitled to recover half the filing fee of \$25.00.

Pursuant to all of the above, as for the monetary order, I find that the landlord has established a claim of \$310.00 (\$285.00 + \$25.00). I therefore grant the landlord a monetary order under section 67 of the Act for \$310.00.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$310.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: December 24, 2009

Dispute Resolution Officer