



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of her security deposit and a cross-application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on November 25, 2009, the tenant did not participate in the conference call hearing.

As the tenant did not participate to advance her claim, the claim is dismissed without leave to reapply.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed testimony is as follows. The rental unit was brand new and had never been occupied at the time the tenancy began. The tenancy began on December 1, 2008 and was set to run for a fixed term ending on May 31, 2009 after which it was to become a month to month tenancy. Rent was set at \$1,250.00 per month and a \$625.00 security deposit was paid. The tenant verbally indicated to the landlord that she would be vacating the rental unit at the end of May but did not give him written notice. The landlord testified that he did not have any assurance that the tenant was vacating until she moved out on May 31, 2009. The landlord testified that he

advertised the rental unit for sale in April and sold the property in August. When asked what attempts he made to re-rent the rental unit, the landlord responded that he thought he began advertising the unit again sometime in June.

At the end of the tenancy the landlord discovered that the granite countertop in the kitchen had been damaged. The landlord obtained an estimate indicating that it would cost \$300.00 to repair the countertop and entered that estimate into evidence and also entered a photograph of the countertop. The landlord did not repair the countertops, but as a condition of the sale was required to repair them, so the landlord paid the purchaser \$300.00 as the cost of repair. The landlord testified that excessive sun on the window sills had caused them to discolour and peel. The landlord obtained an estimate indicating that it would cost \$80.00 to repair the window sills and entered that estimate into evidence. The landlord used the company who provided the estimate to repair the sills at the estimated cost. The tenant failed to clean the carpets at the end of the tenancy. The landlord testified that the carpets were soiled and required cleaning. The landlord had the carpets cleaned at a cost of \$60.00 and entered evidence of the cleaning bill into evidence. The rental unit was not adequately cleaned at the end of the tenancy and the landlord hired a cleaning service to perform additional cleaning at a cost of \$65.00. The landlord entered the cleaning invoice into evidence.

The landlord seeks to recover lost income for the month of June and the cost of repairing countertops and sills and cleaning the carpets and the rental unit as well as the filing fee paid to bring his application.

Analysis

The landlord bears the burden of proving his claim on the balance of probabilities. The landlord also bears the burden of proving that he has made reasonable efforts to mitigate his losses. I am not satisfied that the landlord made reasonable efforts to re-rent the rental unit and accordingly dismiss that part of his claim.

I accept the landlord's undisputed testimony with respect to the granite countertop. I find that the tenant caused the damage to the countertop and award the landlord \$300.00. The claim for the cost of repairing window sills is dismissed as I am not satisfied that the tenant caused the damage rather than the natural effect of the sun or inadequate sanding and painting when the sills were originally finished. I accept that the carpets and suite required cleaning and I award the landlord \$60.00 and \$65.00 respectively for those claims. The landlord is also entitled to recover the \$50.00 filing fee.

I award the landlord \$475.00 which represents the cost of repairing the countertop, cleaning the carpets, cleaning the suite and the filing fee. The landlord currently holds a \$625.00 security deposit and 79¢ in interest which has accrued. I order the landlord to retain \$475.00 from the deposit and interest and I order the landlord to return the balance of \$150.79 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$150.79. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlord may retain \$475.00 from the security deposit and interest and is ordered to return the balance of \$150.79 to the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 11, 2009.
