Decision

Dispute Codes: MND, MNSD, FF

Introduction

This hearing dealt with two applications: 1) from the landlord for a monetary order for damage to the unit, retention of the security deposit and the "furniture damage deposit," and recovery of the filing fee; 2) from tenant "SLJ" for return of the security deposit and the "furniture damage deposit."

The landlord testified that he personally served the application for dispute resolution and notice of hearing packages on tenants "KWM" and "SLJ" at the address shown on tenant "SLJ's" application for dispute resolution. While the landlord's package for tenant "SP" was left with tenants "KWM" and "SLJ," the landlord stated he knew tenant "SP" was in Australia at that time.

The hearing was originally scheduled to take place at 11:00 a.m. on December 1, 2009, and the landlord and tenants "KWM" and "SLJ" appeared. However, as transmission of the tenants' voices was poor, with the agreement of the parties the dispute resolution officer adjourned the hearing, informed the parties that the hearing would be rescheduled, and advised them that they would be informed of the new date and time.

Subsequently, the residential tenancy branch mailed the landlord's notice of adjourned hearing to him at the address shown on his application for dispute resolution. The notice of adjourned hearing was also sent to each of the three tenants at the address shown on tenant "SLJ's" application for dispute resolution; that address is identical to the one shown for all three tenants on the landlord's application for dispute resolution.

While the landlord attended the rescheduled hearing, there were no tenants present.

Issues to be decided

- Whether either party 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 October 30, 2008 to April 30, 2009. Rent in the amount of $1,500.00 was due and payable in advance on the first day of each month. A security deposit of $750.00 was collected on October 30, 2008. As well, a "furniture damage deposit" of $750.00 was collected on October 30, 2008. A move-in condition inspection and report were completed by the parties on October 22, 2008.

A move-out condition inspection was conducted on two occasions: April 30, 2009 and May 6, 2009. The move-out condition inspection report itself appears to have been completed and signed by the parties on May 6, 2009.

Tenant "SLJ's" application notes that the parties discussed the following aspects of the landlord's claim which appear on the move-out condition inspection report:

$56.00 - broken glasses & dishes

$15.74 - dishwasher cup

$59.84 - water filter

$21.39 - lightbulbs

$55.31 - outside lights

$350.00 - cleaning (14 hrs. x $25.00/hr)

$400.00 - new carpet for one room

$12.23 - aerator

Total: $970.51

By way of their signatures on the move-out condition inspection report, all three tenants authorized the landlord's withholding of $970.51 from the combined security / furniture damage deposits.

It is not clear what agreement, if any, was reached between the parties for any amount beyond this to be withheld. For example, in tenant "SLJ's" application it is alleged that the landlord's addition of $51.32 for replacement of the DVD remote control onto the move-out condition inspection report was made after the tenants' signatures had been affixed to the report.

In the tenant's application it is also noted as follows:

> So after our meeting ended we signed the inspection papers to confirm our meeting and we left with our copy. [The landlord] also exclaimed that our itemized inspection report wasn't finished and he had more things to tally up.

In his original application the landlord takes the position that after the tenants had vacated the unit and had signed the move-out condition inspection report, there was justification to withhold not only $970.51, as above, but also $51.32 for replacement of the DVD remote control, in addition to the cost for utilities of $352.64. In total the landlord's claim amounted to $1,374.47 ($970.51 + $51.32 + $352.64).

Where amounts vary slightly for specific items shown in the move-out condition inspection report and the landlord's submission, I have held with the amounts reflected in the move-out condition inspection report as underlined below. For example:

broken glasses and dishes: $56.00 v. $60.00

lightbulbs: $21.39 v. $23.50

new carpet: $400.00 v. $395.70

While the landlord sent a cheque to one of the tenants for the difference between the total deposits collected of $1,500.00 and the amount of his claim for $1,374.47, the cheque was returned to him. In the result, the landlord continues to hold the full amount of the combined security / furniture damage deposits of $1,500.00.

The landlord states that during the brief hearing on December 1, 2009, tenants "KWM" and "SLJ" confirmed their receipt of a copy of his updated / amended application showing additions to his original claim in the amount of $1,108.31. This raised the total amount of the landlord's claim to $2,482.78 ($1,374.47 + $1,108.31). The landlord testified that he forwarded copies of his updated / amended application to the tenants at the forwarding address provided by them on the move-out condition inspection report.

Analysis

Related to service of the landlord's application for dispute resolution and notice of hearing, section 89 of the Act sets out **Special rules for certain documents**. Specifically, this section of the Act provides in part, as follows:

> 89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
>
> (a) By leaving a copy with the person;
>
> (b) If the person is a landlord, by leaving a copy with an agent of the landlord;
>
> (c) By sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) If the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) As ordered by the director under section 71(1) *[director's orders: delivery and services of documents].*

Where it concerns service of the application for dispute resolution and notice of hearing on tenant "SP," there is no evidence that service was undertaken pursuant to any of the above statutory provisions. Further, there is no conclusive evidence that tenant "SP" was otherwise made aware of the hearing. Accordingly, I must dismiss the landlord's application for a monetary order in relation to tenant "SP" with leave to reapply.

Arising out of the above, Residential Tenancy Policy Guideline # 13 speaks to **Rights and Responsibilities of Co-Tenants**. This guideline states in part, as follows:

> Co- tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.
>
> Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Based on the documentary evidence and undisputed testimony of the landlord, I find that the parties completed a move-out condition inspection and report on May 6, 2009. Pursuant to the move-out condition inspection report, agreement appears to have been reached between the parties whereby the landlord was authorized to withhold $970.51 from the combined security / furniture damage deposits. I therefore find that the landlord has established to a claim of **$970.51** for the items set out earlier above.

There is some question around whether the tenants agreed to the landlord's withholding of **$51.32** for the DVD player remote control at the time when the move-out condition inspection report was completed and signed. In tenant "SLJ's" application she makes a

manual notation on a copy of the move-out condition inspection report that “info changed after signed.” However, as her application does not go on to specifically dispute this particular aspect of the landlord’s claim, I find on a balance of probabilities that the landlord has established entitlement to this amount.

As for utilities, after reviewing the receipt submitted into evidence, I find the landlord has established entitlement to **$352.64**.

Following are additional aspects of the landlord’s claim:

> $200.00 – outside lights removal and installation, single bed & sofa bed repairs, wooden floor repairs
>
> $360.00 – repairs to chipped and cracked tiles
>
> $75.00 – BBQ cleaning & repairs, 3 hrs @ $25.00/hr
>
> $41.48 – BBQ cover
>
> $11.10 – BBQ propane
>
> $52.49 – toaster
>
> $41.99 – mixer (shown on inventory as “blander” [sic])
>
> $315.00 – carpet cleaning
>
> $11.25 – porcelain touch-up to repair chipped tiles
>
> Sub-total: $1,108.31

I dismiss the landlord’s claim for the following items from the above list for the reasons stated:

> $41.99 – mixer / “blander”: there is no conclusive evidence that this particular appliance was provided at the start of tenancy (for example, an inventory signed

by the parties) and / or any mention of its existence or condition on either the signed move-in or move-out condition inspection reports.

$52.49 – toaster: there is no conclusive evidence that this particular appliance was provided at the start of tenancy (for example, a signed inventory) and / or any mention of its existence or condition on either the signed move-in or move-out condition inspection reports.

$75.00 – BBQ cleaning and repairs: there is no conclusive evidence that this particular item was provided at the start of tenancy (for example, a signed inventory) and / or any mention of its existence or condition on either the signed move-in or move-out inspection reports.

$41.48 – BBQ cover: same as immediately above.

$11.10 – BBQ propane: there is no conclusive evidence that this was provided at the start of tenancy and there is no mention of it on either the signed move-in or move-out condition inspection reports.

Sub-total: $222.06

I find the landlord has established entitlement to the following items from the above list for the reasons stated:

$100.00 – outside lights removal and installation, single bed and sofa bed repairs, wooden floor repairs: while burnt out light bulbs and damage to floors is noted on the signed move-out condition inspection report, there is no documentation on either the move-in or move-out condition inspection reports as to the existence or condition of the single bed and sofa bed. Accordingly, I find the landlord has established entitlement to $100.00, or half the amount claimed.

$180.00 – repairs to chipped and cracked tiles: while damaged tiles are noted on the signed move-out condition inspection report, and photographs show damage to certain tiles, the “receipt” submitted into evidence reads “Tile Quote.” As there

is no conclusive evidence that the landlord has actually incurred this cost, on the basis of the other relevant evidence I find the landlord has established entitlement to $180.00 which is half the amount claimed.

$315.00 – carpet cleaning: documented evidence of stains on the signed move-out condition inspection report.

$11.25 – porcelain touch up to repair chipped tiles: documented evidence of damage on the signed move-out condition inspection report.

Sub-total: **$606.25**

As the landlord's application has succeeded, I also find he is entitled to recover the **$50.00** filing fee.

In summary, as for the monetary order, I find that the landlord has established a claim of **$2,030.72** ($970.51 + $51.32 + $352.64 + $606.25 + $50.00). I order that the landlord retain the combined security / furniture damage deposits of $1,500.00 plus interest on these combined deposits in the amount of $3.88 totaling $1,503.88, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of **$526.84** ($2,030.72 - $1,503.88).

The tenant's application is hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **$526.84**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 22, 2010

_____

Dispute Resolution Officer