DECISION

Dispute Codes MNR MNSD FF
OLC O MNSD MNDC FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking an Order to have the Landlord comply with the Act, Other, and a Monetary Order for the return of double her security deposit, compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Landlord.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on approximately October 22, 2009. The Tenant confirmed receipt of the Landlord's hearing documents.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the *Act*, sent via registered mail on October 29, 2009. The Landlord confirmed receipt of the Tenant's hearing documents.

The Tenant testified that she did not receive copies of all of the Landlord's evidence. The Tenant argued that she received only one package of evidence from the Landlord that consisted of photographs, three pages of receipts, and a typed letter from the Landlord listing his claim for damages. The Tenant stated that she has never received a copy of the tenancy agreement or the move-in inspection report, as evidence or during the tenancy, and that she did not receive copies of the rest of the evidence submitted to the Residential Tenancy Branch.

The Landlord and the Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Tenant had a witness available to testify.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order for a) unpaid rent, and b) to keep the security deposit under sections 38 and 67 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order a) to have the Landlord comply with the Act, b) other reasons, c) a Monetary Order for return of double the security deposit, and d) money owed or compensation for damage or loss under the Act, under sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenancy agreement began on July 22, 2008 with two co-tenants however the Tenant argued they were able to move into the rental unit on July 17, 2008. The original tenancy agreement was for a fixed term set to expire on July 31, 2009. Both the Tenant and the Landlord signed acknowledging that the Tenants were required to move out of the rental unit at the end of the fixed term of July 31, 2009. The Landlord and both co-tenants later entered into a verbal tenancy agreement whereby the parties would continue with a month to month tenancy with the same rent and conditions as the original agreement.

The monthly rent was payable on the first of each month in the amount of $1,850.00 and the Tenants paid a security deposit of $925.00 on May 12, 2008. A move-in inspection report was completed on July 19, 2008 and signed by both Tenants however when the Landlord attended the move-out inspection he did not bring the form and there was no written move-out inspection report completed.

The Landlord confirmed that the Tenant provided the Landlord with her forwarding address, in writing, on October 15, 2009. The Landlord did not receive the co-tenant's forwarding address.

This Tenant continued to occupy the rental unit until October 15, 2009 while her co-tenant vacated the rental unit on September 30, 2009.

The Tenant provided the Landlord with written notice via e-mail on September 10, 2009, to end the tenancy effective October 15, 2009. The Tenant argued that her co-tenant was aware of this notice and made a choice to move out of the rental unit earlier.

The Landlord confirmed that he did not receive a separate written notification from the co-tenant of her intention to move out of the rental unit on September 30, 2009.

The Landlord is seeking $925.00 for the balance of October 2009 rent and requested that his application for dispute resolution be amended to include his claim for damages as submitted in his evidence sent to both the Residential Tenancy Branch and the Tenant.

The Landlord argued that he did not make an effort to advertise or re-rent the unit until October 27, 2009 because he was considering keeping the unit for the Olympics and then changed his mind towards the end of October to re-rent it. The Landlord was able to secure new tenants who took occupancy on November 1, 2009.

The Landlord advised that he is an agent for his daughter who owns the rental unit and confirmed that she has owned this unit for approximately six years. The carpets are original, the building is about six or seven years old, and the Landlord testified that the rental unit was painted in 2006.

The Landlord is seeking $850.00 because the Tenants painted the rental unit and changed the color. The Landlord argued that he gave the Tenants verbal permission to paint but that he told them they had to return the rental unit to the original color at the end of the tenancy. The Landlord confirmed that the unit was painted in 2006 and that he has not repainted the unit since the Tenant has moved out.

The Tenant confirmed that she had verbal permission to paint however she was never told they had to repaint at the end of the tenancy to return the unit to the original color.

The Landlord is seeking $25.77 for the cost to replace the closet shelving clips. The Landlord argued that the Tenants removed closet shelving and clips and did not replace them at the end of the tenancy. The Landlord argued that there were parts missing.

The Tenant confirmed that they removed the shelving and did not replace them at the end of the tenancy.

The Landlord is seeking $69.00 for carpet cleaning and argued that he hired a carpet cleaner on October 27, 2009 and submitted a written receipt.

The Tenant confirmed that she did not steam clean the carpet at the end of the tenancy however the carpet was badly stained, dirty and well worn at the on-set of her tenancy.

The Landlord requests $90.00 for cleaning the rental unit and claimed that he had to hire someone from the newspaper to come and clean the unit and that he was not given a receipt.

The Tenant argued that she hired a professional cleaner and paid them for four hours to clean the rental unit on October 15, 2009. The Tenant argued that the cleaner was at the rental unit when the Landlord arrived to do the move out inspection.

The Landlord is also claiming $25.00 to purchase light bulbs of a higher quality for the bathroom. The Landlord argued that the Tenant replaced the bathroom light bulbs with a lower quality light bulb and he confirmed that he has not purchased the new bulbs yet.

The Tenant confirmed that when light bulbs burnt out she replaced them and all light bulbs were working at the end of the tenancy.

The Tenant confirmed that her claim is for the return of double her security deposit plus interest and to recover the cost of the filing fee.

Analysis

There is opposing testimony on whether the Landlord served the Tenant with copies of all of the Landlord's evidence in accordance with section 3.1 of the *Residential Tenancy Branch Rules of Procedure.* Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice; therefore as the Tenant has not received copies of some of the Landlord's evidence I find that not all of the Landlord's evidence can be considered in my decision. I will consider the evidence that was submitted to the Residential Tenancy Branch on October 30, 2009, as this is the evidence received by the Tenant, and I will consider the Landlords' testimony in relation to the other evidence.

The Tenant's Witness was not called upon to testify as the required information was obtained through the Landlord's and Tenant's testimony and evidence.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Landlord's Application

The Landlord has requested to amend his application to include damages and this request for amendment was included in the evidence received by the Tenant several months in advance of this hearing. Based on the aforementioned I approve the Landlord's request to amend his application in accordance with section 2.5 of the *Residential Tenancy Branch Rules of Procedure.*

After careful review of the evidence I find that the Tenant entered into a written tenancy agreement which expired and then entered into a verbal month to month tenancy agreement with the Landlord as a co-tenant. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy which means that the landlord can recover the full amount of rent or damages from all or any one of the tenants. In this case the Landlord has applied for unpaid rent and damages against only one of the Tenants therefore the Landlord is prevented from applying, in the future, for these claims against the co-tenant, who is not named in this proceeding.

The Landlord is claiming $925.00 for rent for the period of October 16 to October 31, 2009, claiming that the Tenant should have "assumed" that the full rent was payable for the month of October 2009, even though the Tenant provided the Landlord notice on September 10, 2009 that she would vacate by October 15, 2009.

I note that the Tenant's notice to end the tenancy was not in compliance with section 45 of Act which provides that a tenant may end a periodic tenancy if one month's notice is received by the Landlord on the day before the day in the month the rent is due. I also note that there is opposing testimony as to whether there was verbal consent to the end of tenancy on October 15, 2009 and what the terms of that verbal agreement may have been.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Based on the above, I find that the Landlord has failed to comply with section 7(2) of the Act which requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss. In this case the Landlord made no attempt to re-rent the unit until October 27, 2009, long after he received the Tenant's notice on September 10, 2009. I note that the Landlord was able to re-rent this unit within four (4) days of posting it on the internet. Therefore, on a balance of probabilities, it would be reasonable to conclude that had the Landlord advertised the unit when he received the Tenant's notice he would not have suffered a loss in rent and would have been able to re-rent the unit as early as October 15, 2009. As per the aforementioned I find that the Landlord has failed to prove the test for damage or loss as listed above, and I hereby dismiss his claim of $925.00 without leave to reapply.

With respect to the Landlord's claims for damages of $1,034.00 ($850.00 for painting the rental unit, $69.00 for carpet cleaning, $90.00 in cleaning costs, and $25.00 for light bulbs), in the presence of opposing testimony from the Tenant and in the absence of a move-out inspection form, I find that at the time of the hearing, there was insufficient evidence to prove the test for damage and loss, as listed above, and I hereby dismiss the Landlords claim of $1,034.00 without leave to reapply.

The testimony confirms that the Tenants removed shelves and did not replace all the pieces at the end of the tenancy causing the Landlord to suffer a loss of $25.77. Based on the aforementioned I find that the Landlord has proven the test for damage or loss and I approve his claim in the amount of $25.77.

As the Landlord has been partially successful with his claim I award him recovery of $25.00 of the filing fee.

Landlord's Monetary Claim – I find that the Landlord is entitled to a monetary claim from the Tenant as follows:

Shelving parts	$25.77
Filing fee	25.00
Subtotal (Monetary Order in favor of the Landlord)	**$50.77**

Tenant's Application
The Tenant is seeking the return of double her security deposit plus interest and argued that she provided the Landlord her forwarding address on October 15, 2009 and still has not had her security deposit returned.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit **or** file for dispute resolution no later than October 30, 2009. The Landlord filed application for dispute resolution on October 22, 2009.

Based on the above, I find that the Landlord has not failed to comply with Section 38(1) of the *Act* and that the Landlord is not subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the amount of the security deposit.

That being said, I find that the Tenant has not proven entitlement to return of double her security deposit and as a result the Tenant is only entitled to return of the original security deposit plus interest less any claims awarded to the Landlord.

As the Tenant has been partially successful with her application I hereby award recovery of the $25.00 filing fee.

Tenant's Monetary Claim – I find that the Tenant is entitled to a monetary claim from the Landlord as follows:

Security Deposit $925.00 plus Interest of $8.87 from May 12, 2008	$933.87
Filing fee	25.00
Subtotal (Monetary Order in favor of the Tenant)	**$958.87**

Off-Set Monetary Claims – Cross Applications – These claims meet the criteria under section 72(1) of the *Act* to be offset against each other's claims as follows:

Monetary Order in favor of the Tenant	$958.87
Less Monetary Order in favor of the Landlord	-50.77
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	**$908.10**

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **$908.10**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court as an order of that Court.

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: February 18, 2010.

Dispute Resolution Officer