Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim and a cross-application by the tenant for a monetary order. Both parties participated in the conference call hearing.

At the hearing the tenant withdrew his claims for cleaning and repairs. At the hearing the parties agreed that the tenant's counsel would facilitate an exchange of the key to the rental unit for the $80.00 key deposit.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the tenant entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on October 9, 2008 and was set to run for a fixed term expiring on October 9, 2009. The parties further agreed that the tenancy ended on September 30, 2009. The tenant paid a $500.00 security deposit at the outset of the tenancy and that the tenant paid an $80.00 deposit for a key which was the sole means of access to the rental unit.

The parties agreed that a condition inspection report was completed at the outset of the tenancy (the "Move-In Report") and at the end of the tenancy (the "Move-Out Report"),

although there is some dispute as to the date on which the latter was performed. The tenant claimed that the Move-Out Report was completed on September 13, 2009 and provided a copy of the report which had originally been dated September 30, 2009 but had the date changed to September 13, 2009. The tenant claimed that the Move-Out Report was completed and a number of cleaning issues and required repairs were listed, which he set about correcting over the course of the following 17 days. The tenant claimed that he attempted to contact the landlord to arrange a second inspection on September 30, but that she did not return his telephone calls. The landlord denied that any inspection took place on September 13 and claimed that the only inspection which took place was on September 30 at which time she claimed that the Move-Out Report was completed.

I address the claims of the parties and my findings around each as follows.

[1] **Loss of income.** The landlord seeks to recover $1,000.00 in loss of income for the month of October and $500.00 in loss of income for November 1-15. The landlord testified that she received notice from the tenant on or about August 7 that he would be vacating the rental unit on September 30. The landlord claimed that she began posting the rental unit in mid-August but was unable to re-rent the unit until November 14. The tenant testified that he and the landlord came to a mutual verbal agreement that the tenancy would end on September 30 and the tenant would be relieved of his obligation under the fixed term to stay until October 9. As the landlord has disputed that she agreed to ending the tenancy on September 30 and in the absence of corroborating evidence to that effect, I find that the tenant has failed to prove that there was a verbal agreement to end the tenancy on September 30. Section 45(2)(a) of the Act provides that a tenant cannot end a fixed term tenancy prior to the date specified in the tenancy agreement. I find that the notice given by the tenant cannot have been effective prior to October 9 and I further find that section 53 of the Act operates to automatically change the effective date of the tenant's notice to October 9. I find that the tenant is liable for rent for the period from October 1-9 and I award the landlord $290.32 in rent for that

period. I find that the tenant gave adequate notice to end the tenancy on October 9 and find that the landlord is not entitled to recover loss of income for any period of time after that date. The claim for loss of income for October 10 – November 15 is dismissed.

[2] **Stove damage.** The landlord seeks to recover $500.98 which she claims it will cost to replace the ceran stovetop. The landlord testified that the stove was new at the beginning of the tenancy and that the tenant caused damage to the stovetop which could not be repaired. The landlord provided photographs of the stovetop which she claimed was taken on September 30, the date on which she claims the Move-Out Report was completed. The tenant claimed that the Move-Out Report was completed on September 13 and claimed that the landlord's photograph must have been taken on that date. The tenant provided a photograph of the stovetop which he claimed was taken on September 30. The landlord's photographs show that the stovetop had a number of marks both on and around the burner. The landlord's photographs show marks on the element area as well as a ring immediately outside the perimeter of the element. The tenant's photographs were clearly taken under different lighting and while a close examination shows the marks on the element, there is no evidence of marks outside the element. Although the changes made to the Move-Out Report would have ordinarily suggested to me that the inspection took place on the 30th and the date was later changed, I find that there is no way to rationally explain how the tenant's photograph taken on the 30th could show that there were no marks outside the element while the landlord's photographs which she claimed were taken after the tenant had vacated on the 30th show evidence of those marks. I find that the condition inspection took place on September 13 and that the landlord's photographs were taken on that date. I find that the tenant had substantially cleaned the stovetop by the time the landlord took her photographs on the 30th. While there are marks on the element and the landlord seeks to recover the cost of replacing the stovetop, at the hearing the landlord acknowledged that she had not yet replaced the stovetop and that the unit had been re-rented, with new tenants

presumably using the damaged stovetop. I have no evidence that the damage is anything more than cosmetic and I find that it may be characterized as reasonable wear and tear. For these reasons I dismiss the claim for the cost of replacing the stovetop.

[3] **Cleaning.** The landlord seeks to recover $180.00 which represents 3 hours of cleaning at a rate of $60.00 per hour. The landlord testified that the rental unit had not been adequately cleaned at the end of the tenancy and that she spent 3 hours more thoroughly cleaning the unit and cleaning the carpets. The landlord provided photographs of the unit showing a number of areas which required cleaning. The tenant testified that he hired professional cleaners to clean the unit and the carpets. The tenant provided copies of invoices from a cleaning service and a carpet cleaning service showing that on September 22 he paid $90.00 to have the unit cleaned and on September 23 he paid $100.00 to have the carpets cleaned. The tenant also submitted statements from those two service agencies which were dated January 26, 2010 and stated that no further cleaning was necessary and that the unit did not require a new carpet. I find these statements to be of limited probative value as they were clearly written by the tenant and while they may have been signed by agents of those agencies, were signed 4 months after the services were performed. There is no indication why these agents would have such clear memories of this unit so long after routine services were performed. For the reasons given in the preceding paragraph, I find that the landlord's photographs were taken on September 13, well before the tenant vacated the rental unit and before the cleaning agencies were retained by the tenant to clean the unit. I find that the landlord has not proven that the rental unit required cleaning after the tenant had vacated and I dismiss the claim.

[4] **Carpet replacement.** The landlord seeks to recover $2,000.00 as the cost of replacing carpets in the rental unit. The landlord provided photographs showing marks on the carpets which she claimed could not be removed by carpet cleaning. The tenant denied that there were stains on the carpets which could be

characterized as damage beyond reasonable wear and tear. Again, I find that the landlord's photographs were taken on September 13 before the tenant arranged for carpet cleaning. In the absence of photographs taken after the carpets were cleaned, I find that the landlord has failed to prove that the carpets were irreparably damaged and accordingly I dismiss the claim.

[5] **Closet door repair.** The landlord seeks to recover $50.00 as the cost of repairing a closet door in the rental unit. The landlord provided a photograph showing a closet door which was partially disengaged from the tracks and had a hole in the door. The tenant testified that the closet door was repaired and provided a photograph showing the door properly hung and without damage. Again, I find that the landlord's photograph was taken on September 13 before the tenant had an opportunity to repair the door. Although the landlord questioned whether the tenant's photograph was of the door in question, as I have found that the landlord's photograph was taken prior to the time the tenant had to perform repairs, I find that the landlord has failed to prove that the damage was not repaired in any event. The claim is dismissed.

[6] **Mirror.** The landlord seeks to recover $205.00 as the cost of repairing a broken mirror in the rental unit. The landlord provided a copy of an invoice showing that she paid $205.00 for a replacement mirror, but did not provide photographs of the damage. The Move-Out Report does not indicate damage to a mirror. The tenant denied that a mirror was broken. I find that the landlord has failed to prove that the damage to the mirror occurred during the tenancy and dismiss the claim.

[7] **Lint filter.** The landlord seeks to recover $50.00 as the cost of a lint filter which she claims was missing from the dryer at the end of the tenancy. The Move-Out Report shows that the filter was missing. The tenant testified that the filter was missing throughout the tenancy and that as he is inexperienced in using a dryer, he was unaware that a filter should have been in place. I accept that the lint filter was missing at the end of the tenancy and I do not accept that it was missing throughout the tenancy. The tenant signed the Move-Out Report acknowledging

that the filter was missing and had the opportunity to make a note that it had not been in place throughout the tenancy, but chose not to do so. As the Move-In Report does not note that the filter is missing, the tenant should have been alive to the fact that there was a discrepancy between the two reports and brought this to the landlord's attention. I find that the tenant must be held liable for the value of the missing lint filter. The landlord testified that through a telephone conversation with a company that sells used appliances she learned that a replacement filter would cost $50.00. The landlord provided no corroborating evidence such as a written estimate. I am not persuaded that the filter will cost as much as the landlord claims but I am satisfied that the landlord is entitled to a reasonable amount to replace the filter. I find that $25.00 will adequately compensate the landlord for this loss and I award her that sum.

[8] **Strata fines.** The landlord seeks to recover the cost of two fines which have been levied against the unit by the strata corporation. The first fine is for $350.00 for improperly disposing of garbage. The tenant claimed that he paid the fine to the landlord in cash and that she did not give him a receipt for that payment. The landlord testified that she always gave the tenant receipts for payments and provided copies of receipts for rental payments throughout the tenancy. The tenant argued that the receipts showed payment of $1,000.00 but that he actually paid the landlord $1,100.00 each month, $100.00 of that payment being for internet service. The landlord responded by saying that she had also receipted the tenant for the internet service, but that those receipts were given separately from the rent receipts. The second fine was for $157.50. The tenant submitted a copy of a letter dated January 29, 2010 from the agents for the strata corporation advising that the fee was being reversed. The landlord testified that she had not received a copy of that letter and that to her knowledge, charges had not been reversed. I find that the tenant has acknowledged liability for the first fine of $350.00. I find that the tenant has not paid the landlord for the $350.00 fine. I have arrived at this conclusion for a number of reasons. The tenant has not provided any evidence to corroborate his argument that he made the payment, which could have taken the

form of witness statements or a copy of a bank transaction showing that he withdrew that amount of money on the date he claims to have made the payment. Further, while the tenant claimed that he did not receive receipts from the landlord throughout the tenancy, it is clear that he continued to make payments without demanding receipts and the landlord credited those payments to his account. I find it unlikely that the landlord would credit his rental payments and internet payments but not credit the payment for the strata fine. I award the landlord $350.00. The landlord's claim for the second fine of $157.50 is dismissed with leave to reapply as I find it likely that within a short period of time she may receive notification that the fine has been reversed.

[9] **Mental stress.** Both parties seek an award of $1,000.00 for mental stress. These claims are dismissed as there is very limited precedent for awarding mental stress in cases of breach of contract and I find nothing present in these facts which would warrant such an award.

[10] **Stolen paint.** The tenant seeks to recover $200.00 as the cost of paint which he claims the landlord removed from the rental unit. The tenant testified that he hired painters to work in the rental unit and that on September 21 he observed the painters exit the rental unit and leave behind paint. When the tenant re-entered the unit on September 29 he found that the paint was not in the unit. The tenant testified that the landlord was the only party besides himself who had access to the rental unit on that date as the landlord the key which had belonged to the co-tenant and he had the other key. The landlord testified that she did not receive keys to the rental unit until September 30. The tenant claims $200.00 as the value of the paint left in the unit. I find that it is unnecessary to determine whether the landlord removed any paint as I find that the tenant has not proven that the paint he alleges was removed had any actual value. The tenant did not provide evidence showing how much paint was left behind or the value of that paint, which presumably would have been available from the painters who left the paint in the unit. I find that the tenant has not proven his claim and the claim is accordingly dismissed.

[11] **Security deposit.** The landlord seeks to retain the $500.00 security deposit and the tenant seeks an order for double the security deposit. The tenant made an argument that the $80.00 key deposit which the landlord collected was contrary to the Act because under the Regulation the landlord is not permitted to collect a deposit for a key that is the sole means of access to the rental unit, which the parties agreed that this key was. The tenant argued that the Act provides that the key deposit should therefore form part of the security deposit and that the tenant was entitled to an award of double the deposit. The tenant referenced section 2 of the schedule to the Act, by which I assume was meant the standard terms of tenancy agreements which is appended to the Regulation. Section 2 of that Schedule is a reference to section 38 of the Act. I agree that the landlord was not entitled to collect a key deposit in these circumstances. However, the only provision in the Act whereby the landlord must pay double the deposit to the tenant is pursuant to sections 38(1) and (6) where the landlord has not either filed an application for dispute resolution or returned the security deposit within 15 days of the later of the end of the tenancy or the date the forwarding address is received. In this case the tenancy ended on September 30 and the landlord made her application to retain the deposit on October 9. I find that the landlord acted within the statutorily prescribed timeframe and therefore the doubling provision of section 38(6) does not apply. It is unnecessary to include the key deposit as part of the security deposit as no interest will be payable under the formula provided in section 4 of the Regulation and as the parties have reached an agreement with respect to the return of the deposit. The security deposit will be offset against the award granted to the landlord.

[12] **Filing fee.** Both parties seek to recover the $50.00 paid to bring their applications. As the landlord has enjoyed partial success in her claim and the tenant has been wholly unsuccessful, the tenant will bear the cost of the application fees. I award the landlord $50.00.

In summary, the tenant's application is dismissed in its entirety and the landlord has been successful in the following claims:

Loss of income	$290.32
Lint filter	$ 25.00
Strata fine	$350.00
Filing fee	$ 50.00
Total:	**$715.32**

I order that the landlord retain the security deposit of $500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of $215.32. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for $215.32 and may retain the security deposit. The tenant's claim is dismissed.

As the parties have agreed to exchange the key deposit for the key, the tenant's claim for the return of that deposit is dismissed with leave to reapply.

Dated: February 04, 2010