Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing.

At the outset of the hearing the landlord confirmed that she wished to withdraw her claim for $89.00 for carpet cleaning as that issue had been addressed in a previous hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on May 1, 2007 and ended on or about May 31, 2009. A condition inspection was not performed either at the beginning or at the end of the tenancy and a report was not generated. I address the landlord's claims and my findings around each as follows.

[1] **Cleaning and repairs.** The landlord seeks to recover the cost of replacing light bulbs, repairing cabinets and cleaning the rental unit.

a. **Light bulbs.** The landlord testified that at the end of the tenancy she spent $27.00 replacing 7 light bulbs which had burned out. The landlord did not have a receipt for the light bulbs but claimed that they cost just under $4.00

per bulb. The tenant acknowledged that a number of light bulbs were not functioning at the end of the tenancy but argued that at the beginning of the tenancy there were a number of bulbs which were burned out and that more had burned out during the tenancy. The tenant argued that light bulbs were available to be purchased for significantly less than the price the landlord was claiming. Residential Tenancy Policy Guideline #1 provides that the tenant is responsible to replace light bulbs during the course of the tenancy. If there were light bulbs which were not functioning at the beginning of the tenancy, the tenant should have informed the landlord at that time and asked that the light bulbs be replaced. I find that the landlord is entitled to recover the cost of replacing the light bulbs. In the absence of a receipt showing how much was spent on the light bulbs and in light of the tenant's objection to the quantum of the claim, I find that an award of $2.00 per bulb will adequately compensate the landlord and I award her a total of $14.00.

b. **Cabinet repair.** The landlord testified that she spent approximately one hour of her own time replacing the clips that held face boards under the kitchen and bathroom sinks. The landlord testified that the face boards had been pulled away from the cabinetry and that at the outset of the tenancy they were in good condition and were secured to the cabinetry. The tenant testified that she was not aware of any problem with the face boards throughout the tenancy and denied having pulled the face boards away from the cabinetry. Both parties submitted written statements from third parties. The landlord submitted a written statement from the tenant who had resided in the rental unit prior to this tenancy in which that party stated that when he left the rental unit it was in perfect condition. The landlord submitted a list of problems at the rental unit which was initialled by a neighbour who viewed the unit after the tenant had vacated and initialled to indicate that the board under the sink was falling off. The tenant submitted statements from parties who were in the rental unit immediately prior to the time the tenant vacated and also from people who helped her move and clean. The statements submitted by the

tenant indicate that there was no damage to the unit. The landlord submitted photographs of the cabinetry which showed that the face board was not securely in place. The landlord bears the burden of proving her claim on the balance of probabilities. While it is clear that at least one face board was not secure, in the absence of reports from the beginning and end of the tenancy in which both parties agreed to the condition of the unit, I find it impossible to determine whether that damage was pre-existing or not. I find it perfectly reasonable that the damage could have been present throughout the tenancy and not noticed by the tenant. I am not persuaded that the problem with the face boards can be attributed to the tenant and accordingly I dismiss the landlord's claim.

c. **Cleaning.** The landlord seeks to recover $150.00 which she claims she paid to have the rental unit cleaned at the end of the tenancy. The landlord testified that the rental unit was inadequately cleaned and that walls had to be washed, and the appliances, cupboards and bathroom cleaned. The landlord testified that she paid a woman to for 15 hours of cleaning at a rate of $10.00 per hour but did not receive a receipt for the payment. The landlord presented the aforementioned list of problems with the unit which was initialled by her neighbour. The list indicated that the bathroom was dirty, there were marks on the walls and window sill and "scrapper [sic] needed on stove" which I take to mean that the stove required cleaning. The landlord did not take photographs of the unit before it was cleaned. The tenant testified that she thoroughly cleaned the unit at the end of the tenancy and provided written statements from parties who had helped her clean. Again, in the face of contradictory evidence and in the absence of a condition inspection report or photographs showing the condition of the unit, I find that the landlord has failed to meet the burden of proving the claim on the balance of probabilities. The claim is dismissed.

[2] **Loss of income.** The landlord claims $750.00 in lost income for the month of June. The landlord testified that the tenant gave her written notice which reads as follows: "I am handing in my notice for June 1st. I will be moving then." The notice is dated April 30, 2009 but the landlord testified she was not sure whether she received the notice on that date. The landlord alleged that the notice was ineffective as it did not meet the requirements of section 52 of the Act which requires the notice to state the address of the unit and the effective date of the notice. The landlord argued that because there was no year indicated on the notice, the landlord could not have known whether the notice was effective in 2009 or another year. The landlord testified that she began advertising the rental unit in mid-May and showed the unit to prospective tenants, but was unable to re-rent the unit in June because of the condition in which it was left. While it is true that section 52 of the Act requires that a notice given by a tenant contain the address of the rental unit and the effective date of the notice, section 68 of the Act permits me to amend the notice if I am satisfied that the person receiving the notice knew or should have known the information that was omitted from the notice. In this case, the landlord acknowledged that she was aware that the notice meant the tenant was moving out and the landlord testified that she advertised the rental unit as being available June 1. The rental unit is in the basement of a home in which the landlord resides on the upper floor and the parties had frequent interactions. There is no question that the landlord was aware which rental unit was being vacated. Because the landlord advertised the unit as available on June 1, I am satisfied that she knew that the notice was intended to end the tenancy effective on that date. I find it appropriate in the circumstances to amend the notice to comply with the Act. Although the landlord questioned whether she received the notice on April 30, she was unable to provide a date on which she did receive the notice. I therefore find that the notice was received on April 30 and was effective to end the tenancy on May 31. As I have already found that the landlord did not prove her claim for cleaning, I find that the landlord cannot rely on the condition of the unit as the reason why the unit was not re-rented for the month of June. The landlord's claim for lost income for June is dismissed.

[3] **Fence repair.** The parties agreed that during the tenancy the tenant ran into a fence post with her car causing damage. The landlord obtained 2 estimates for the repair of the post, one for $700.00 and one for $650.00. The landlord made a claim through the tenant's auto insurer, ICBC, and was advised by ICBC that she could either make a claim through her homeowner's insurance which would then bring a subrogated claim to ICBC or she could make a claim through ICBC. ICBC also advised the landlord that there may be a deduction for depreciation if she chose to proceed through ICBC while there would be no deduction for depreciation if she proceeded through her homeowner's insurance. The landlord testified that she chose to proceed through ICBC as she did not wish to jeopardize her claims-free status with her homeowner's insurance. ICBC offered the landlord $572.00 in compensation, which was based on the lower of the two estimates and took into account depreciation. The landlord seeks an award for the $103.00 difference between the $675.00 average of the two estimates and the amount offered by ICBC. In any claim made by a party for items which depreciate, the depreciation of the item is taken into account. In other words, if the landlord had chosen not to go through either insurer but to recover the value of the fence post solely through arbitration at the Residential Tenancy Branch, any award would have taken into account the depreciation of the fence post rather than awarding the replacement value. The landlord expressed her objection that ICBC had based its offer on the lower of the two estimates provided, but it is nonsensical to expect that an award would be made based on a higher estimate as this would result in the landlord profiting from the award rather than being made whole if she then had the repair completed by the company providing the lower estimate. The judicial system is not designed to assist parties in profiting from a breach of a contract but merely to make them whole. I find that the landlord is not entitled to recover the depreciation applied by ICBC and I dismiss the claim.

[4] **Driveway repair.** The landlord seeks to recover $500.00 as the cost of replacing a part of her driveway that was stained by fluids from the tenant's car. The landlord testified that the tenant had a car which leaked on the 7 year old driveway. The

landlord testified that the tenant was asked not to park on the driveway because the car was leaking fluids so frequently, so the tenant began parking on the street. The landlord provided a professional estimate of $500.00 to cut out and replace the stained area. The landlord testified that she had been advised by the company providing the estimate that cleaning of the area was not effective to remove all of the fluid stains. The tenant testified that her vehicle may have leaked onto the driveway but suggested that the landlord's friends also parked on the driveway and that the stains may have been caused by their vehicles. The tenant acknowledged that she began parking on the street but testified that she did so not because her car leaked fluids, but because the landlord was difficult to please. I find that the landlord has proven on the balance of probabilities that the tenant's vehicle caused the stains in the driveway. I have arrived at this conclusion because the tenant was not able to deny that her car caused the leaks and because I do not accept that the tenant would have given up parking in the driveway without having a reason to do so. I accept the landlord's estimate that it will cost $500.00 to replace the area. Residential Tenancy Policy Guideline #37 contains a depreciation table which identifies the useful life of an asphalt driveway as 15 years. I find that the driveway had already expended half of its useful life and therefore find that the landlord is entitled to recover one half, or $250.00 of the cost of repair. I award the landlord $250.00.

[5] **Borrowed furniture.** The landlord seeks an award of $360.00 to compensate her for furniture she loaned to the tenant during the tenancy. The landlord testified that at the outset of the tenancy she loaned the tenant a number of pieces of furniture until such time as the tenant had purchased her own pieces. Midway through the tenancy the landlord increased the rent by an amount exceeding what is permitted under the Residential Tenancy Regulation in an attempt to establish a monthly rental rate for the furniture. In a previous hearing, the tenant was awarded a reimbursement of the rental increase as it did not comply with the Regulation. The landlord may not unilaterally impose a rental price on the furniture which is not agreed to by the tenant. The landlord chose to loan rather than rent the furniture to

the tenant and apart from the tenant's agreement to begin paying rent for the furniture, may not impose rent on the tenant. The claim is dismissed.

[6] **Filing fee.** The landlord seeks to recover the $50.00 paid to bring this application. I find that the landlord is entitled to recover the fee and I award the landlord $50.00.

Conclusion

In summary, the landlord has been successful in the following claims:

Light bulbs	$ 14.00
Driveway repair	$ 250.00
Filing fee	$ 50.00
Total:	**$314.00**

The landlord has established a claim for $314.00 and I grant the landlord an order under section 67 for that sum. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: February 19, 2010