DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit site or property, for unpaid rent and utilities, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlords to the Tenant, was done in accordance with section 89 of the *Act*, served personally by the female Landlord to the Tenant on October 21, 2009 at 11:00 a.m. at the Tenant's place of employment.

The Landlord and the Landlord's Witness appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Tenant did not appear despite being served notice of today's hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

Are the Landlords entitled to a Monetary Order a) for damage to the unit site or property, and b) for unpaid rent and utilities, and c) to keep all or part of the security deposit under sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on February 1, 2008 and ended sometime during the first week of October 2009. Rent was payable in the amount of $500.00 per month and the Tenant paid a security deposit of $250.00 on January 14, 2008.

The Landlord testified that the she received notification from her bank on October 8, 2009, that the Tenant's October 1, 2009 rent payment was returned because the Tenant had closed her account. The Landlord advised that she attended the rental unit on October 9, 2009, to speak to the Tenant about the unpaid rent which is when the Landlord found the Tenant had vacated the rental unit and had left it dirty.

The Landlord stated that the move-in form which simply lists "KITCHEN, LIVING ROOM, BEDROOM, BATHROOM" was given to the Tenant on February 1, 2008 after

the male Landlord walked through the rental unit with the Tenant. The female Landlord argued that the Tenant did not list anything on the form so the form was left with the Tenant until the male Landlord came back to pick it up on February 4, 2008, at which time the Tenant signed the form without listing deficiencies on the form.

The Landlord confirmed that the previous tenant vacated the rental unit on January 31, 2008, the day before this Tenant took possession of the rental unit.

The Landlord referred to her documentary evidence of photo's, her detailed list of claim, and receipts in support of her monetary claim for October 2009 unpaid rent, unpaid utilities, and costs to clean and repair the rental unit in the amount of $1,045.39. The Landlord confirmed that she was able to re-rent the unit as of November 1, 2009.

The Landlord advised that her spouse pulled out the flowers and put grass seed on the 4' x 5' area where the Tenant planted flowers. With respect to the recycling and landfill charges the Landlord advised that she donated the funds from the bottle depot to the organization running the bottle depot and the landfill fees were $2.00 plus the cost of gas and time to drive approximately fifteen minutes to each location. The Landlord argued that they could not leave the one can of garbage for the weekly pick up because she would have to tag the bag or it may have been overweight.

The Landlord could not provide dates of when the rental unit was last painted, when the window blinds were purchased and how much was paid for these blinds, nor could the Landlord provide the actual cost of materials or cleaning supplies brought from the Landlord's home.

The Landlord's Witness testified that she spent three and a half to four hours assisting the Landlord clean the rental unit. The Witness stated that she personally cleaned floors, walls, appliances, the bathroom, and collected garbage. The Witness argued the rental unit was so dirty that she found dog hair in the fridge. The Witness could not provide testimony as to the condition of the rental unit at the start of the tenancy.

Analysis

All of the testimony and documentary evidence was carefully considered.

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

The evidence supports that the Tenant did not provide the Landlords with written notice to end the tenancy and did not pay the rent owed for October 2009, in contravention of section 45 of the Act which provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. Based on the aforementioned I find that the Landlords have proven the test for damage or loss, as listed above, and I approve the Landlords' claim of $500.00 for October 2009 unpaid rent.

Section 3 of the tenancy agreement stipulates that the Tenant is responsible for the hook-up and payment of all utilities. The evidence supports that the Tenant cancelled hydro on September 30, 2009 causing the Landlords to suffer a loss of $78.86 for the period of October 1 to October 31, 2009, the period that the Tenant was still responsible for the rental unit and utilities. Based on the aforementioned I find that the Landlords have proven the test for damage or loss and I approve their claim of $78.86.

The Landlords have claimed $47.25 in advertising costs to re-rent the unit as of November 1, 2009. I note that if the Tenant had provided the Landlord with proper notice to end the tenancy, the Landlord would still have paid to advertise to re-rent the unit, which I find to be a regular cost of doing the Landlords' business. There is no evidence to support that advertising costs stem from a breach of the Act or the tenancy agreement, therefore I dismiss the Landlords' claim.

With respect to the Landlords' claims for damages I find the move-in inspection report provided by the Landlord does not meet the requirements of the Act as it was not completed by the Landlord in the presence of the Tenant and there is no indication or statement that the Tenant agreed with the report by providing her signature.

The Landlords are seeking $200.00 in cleaning costs stemming from ten hours of cleaning (3 ½ hours for the Witness and 6 ½ hours for the female Landlord). The photo evidence supports that the rental unit was not cleaned at the end of the tenancy however there is no evidence before me to support that areas behind the fridge and stove were cleaned at the onset of the tenancy. There is also no evidence to support that the Tenant was provided detailed instructions on how to move the fridge and stove to prevent damage to the rental unit flooring. The Landlord is claiming cleaning costs at a rate of $20.00 to clean the oven and stove for a total of $60.00 which I find to be excessive. Based on the aforementioned I hereby approve the Landlord's claim in the amount of $120.00 which is comprised of 8 hours of cleaning at a rate of $15.00 per hour.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

The Landlords have claimed $41.68 for the cost of a new shower curtain, a cover for the shower bar, cleaning supplies, and light bulbs. There is no evidence before me to prove the age of the previous shower curtain or the cover of the shower bar and there is no evidence to support that expensive low energy light bulbs were in the rental unit at the onset of the tenancy and the Tenant knew she was required to replace burnt out bulbs with low energy bulbs; therefore the Landlord has not proven the test for damage or loss with respect to these items. The remainder of this claim is for cleaning supplies which I find the Landlord has proven the test for loss for in the amount of $11.90 which is comprised of Lysol $3.47, Magic Eraser $5.86, Bleach $2.00, plus GST of $0.57.

With respect to the Landlords' request for $10.00 for cleaning supplies from home, $10.00 to wash three curtains at home, and $25.00 to clean carpet with a carpet cleaner the Landlords had at home, there is no evidence to support the cost of these items, or the amount used or time spent to support this claim; therefore I find that the Landlords have failed to prove the test for damage or loss and I dismiss their claim.

The Landlord is seeking $20.10 to replace the kitchen blinds and $12.50 for damage to the living room blind which was not replaced. There is no evidence before me to prove the age of the existing blinds, their condition at the onset of the tenancy, and the actual cost to repair the damage, therefore the Landlord has failed to prove the test for damage or loss and I dismiss their claim.

The Landlords are seeking $20.00 to plant grass seed in a 4' x 5' area the Tenant had planted flowers. There is no evidence before me to support that the Tenant was informed not to plant flowers or that it cost $20.00 to pull the flowers, purchase and throw down grass seed. Based on the aforementioned I find the Landlords have failed to prove the test for damage or loss and I dismiss their claim.

The Landlords have claimed $50.00 for costs to repair nail holes in the walls. I note that there is no evidence to support the condition of the walls at the onset of the tenancy or the cost of materials to repair the nail holes and paint over them or the amount of labor included in this claim. Therefore the Landlords have failed to prove the test for damage or loss and I dismiss their claim.

The Landlords are seeking $15.00 for removing recycling items to the bottle depot and $15.00 for removal of items to the landfill. The Landlord provided a receipt in the amount of $2.00 from the landfill and the Landlord chose to donate the proceeds from the bottle depot instead of trying to recover some of her costs. Based on the aforementioned I find the Landlords did not mitigate their losses and did not prove the actual costs incurred outside of the $2.00 paid to the landfill. Based on the aforementioned I approve the Landlords' claim in the amount of $2.00.

As the Landlord has been partially successful with their claim I award recovery of the $50.00 filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Unpaid Rent for October 2009	$500.00
Unpaid Hydro for October 2009	78.86
Cleaning costs	120.00
Cleaning supplies	11.90
Landfill charges	2.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	**$762.76**
Less Security Deposit of $250.00 plus interest of $3.62 from January 14, 2008 to March 9, 2010	-253.62
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	**$509.14**

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **$509.14**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court and enforced 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: March 08, 2010.

Dispute Resolution Officer