

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for a monetary order and the tenant has applied for return of double the amount of her security deposit.

The hearing was conducted via teleconference and was attended by two agents of the landlord and the tenant and her advocate.

The tenant's application named the landlord as a different management company than that named on the landlord's application. I have amended the tenant's application to include the name provided by the landlord. As well, the landlord's application name a male tenant, but there was no evidence provided indicating the male tenant had been served with notice of the landlord's application. As such, I have amended the landlord's application to exclude the male tenant.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit; for damages to the unit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for the return of double the amount of the security deposit, pursuant to Section 38 of the *Act*.

Background and Evidence

The landlord submitted the following documents into evidence:

- A summary of events of the tenancy;
- A copy of tenant security deposit refund statement of account showing the tenant owing the landlord \$895.00 broken down as follows: Carpet cleaning \$80.00; Replace bi-fold door \$60.00; Cleaning \$30.00; and October 2009 rent \$725.00;
- A copy of a letter from the tenant to the landlord dated October 5, 2009 requesting return of the security deposit less \$60.00 for repairs to the pantry and providing the tenant's forwarding address;
- 3 photographs – two of the oven and one of the bi-fold door; and
- A copy of 1 Month Notice to End Tenancy for Cause dated September 12, 2009 with an effective vacancy dated of October 31, 2009.

The tenant submitted into evidence the following documents:

- A copy of the tenancy agreement and addendums signed by the parties on July 1, 2009 for a month to month tenancy beginning on July 1, 2009 for a monthly rent of \$725.00 due on the 1st of the month and security deposit of \$362.50 paid on July 1, 2009;
- A copy of a Condition Inspection Report completed by the parties on the move of July 1, 2009;
- A copy of the tenant's application for hydro service;
- A copy of a letter dated September 12, 2009 from the landlord to the tenants advising of their notice to end the tenancy;
- A copy of 1 Month Notice to End Tenancy for Cause dated September 12, 2009 with an effective vacancy dated of October 31, 2009.
- A copy of tenant security deposit refund statement of account showing the tenant owing the landlord \$895.00 broken down as follows: Carpet cleaning \$80.00; Replace bi-fold door \$60.00; Cleaning \$30.00; and October 2009 rent \$725.00;
- A copy of a note signed by the tenant's sister confirming she witness the delivery of the forwarding address.

The tenant testified that she advised the landlord verbally that she would be moving by the end of September 2009 when on September 12, 2009 she received her one month notice to end tenancy effective October 31. 2009.

The landlord testified that the tenant on September 12, 2009 asked what would happen should she decide to move out the end of September, 2009. He further stated that the tenant then showed up on September 27, 2009 handed in her keys and left, not giving the landlord an opportunity to complete a Condition Inspection Report.

The tenant contends the landlord must complete the Condition Inspection Report regardless of whether or not the tenant is available. And further she states the landlord is required to return the security deposit or apply for dispute resolution to claim against it within 15 days of receipt of the forward address.

In relation to the rent claimed by the landlord the tenant contends the landlord must make attempts to rent out the rental unit prior to claiming against the tenant. The landlord testified that they run ongoing ads in the local newspapers and the unit was re-rented for December 1, 2009.

Analysis

Section 38 of the Act requires the landlord must, within 15 days of the end of the tenancy and receipt of the tenants forwarding address, return the security deposit less any agreed upon deductions or file an Application for Dispute Resolution.

In this case the tenant provided her forwarding address on October 5, 2009 and I find that the tenancy ended on October 31, 2009 as a result of the landlords 1 Month Notice to End Tenancy for Cause.

This gave the landlord until November 15, 2009 to either submit an Application for Dispute Resolution or to return the deposit less the \$60.00 the tenant agreed to. The landlord failed to comply with either and as such, I find the tenant is entitled to double the amount of the security deposit less \$60.00, pursuant to Section 38(6)(b).

As well, Section 38(6)(a) states that since the landlord did not comply with returning the security deposit or filing an application to claim against it, the landlord may not make a claim against the security deposit. As well, I am persuaded by the tenant's argument that the landlord also extinguished his claim to the security deposit by not complying with Section 35 by completing a move out Condition Inspection Report.

However, this does not preclude the landlord for claiming for unpaid rent or for damage to the unit. I am satisfied the landlord took reasonable steps to mitigate the lost rent for October 1, 2009 and therefore find the tenant is responsible for payment of rent for the month of October 1, 2009.

As to the landlord's claim for carpet cleaning, as per the Residential Tenancy Policy Guidelines, a tenant is responsible for carpet cleaning at the end of tenancy of at least one year. As this tenancy was only of 4 months duration I find the tenant is not responsible for cleaning the carpets.

And finally, despite the fact the tenant acknowledged in the hearing that she overlooked the cleaning of the oven, I find that cleaning the oven could not be considered damage to the rental unit and therefore not covered by this application, I dismiss this portion of the landlord's claim.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$775.00** comprised of \$725.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct from double the amount of the security deposit less the damage to the bi-fold door in the amount of \$665.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$110.00**.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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 09, 2010.

Dispute Resolution Officer