

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for damage to the unit site or property, to recover unpaid rent, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents and the amended application was done in accordance with section 89 of the *Act*, and were sent to the tenant by registered mail on November 18, 2009. The tenant confirms receipt of the documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

This tenancy started on May 01, 2008. This was a fixed term tenancy until May 01, 2009 when the tenancy reverted to a month to month agreement. The tenant rented a furnished suite and paid a monthly rent of \$1,150.00 which increased in August 2009 to \$1,192.55. The tenant paid a security deposit of \$575.00 on April 21, 2008. The tenant moved from the rental unit on October 15, 2009 but did not return the keys to the landlord until October 31, 2009.

The landlord testifies that the tenant did not pay his rent on the day it was due for October, 2009. On October 01, 2009 the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent with an effective date to end the tenancy of October 12, 2009. The landlord claims the tenant did not return the keys to him or do the end of tenancy inspection until October 31, 2009. The landlord claims a loss of rent of \$1,192.55.

The landlord testifies that at the move out condition inspection he found the tenant had caused damage to furniture. The landlord claims the tenants' dog has damaged two couches and a sofa, the dog also damaged bedroom furniture and doors, bedside tables, a baseboard and headboard were also damaged. There was a broken bed frame and the mattress was very dirty. In the second bedroom there was a broken bed frame and stained mattress. The landlord estimates the cost of these damages to be around \$300 to \$500.00 but has not provided any receipts or clear photographic evidence of all the damage.

The landlord testifies that the tenant did not clean the stove and the oven was left in a dirty condition which was almost imposable to clean and has to be replaced. The stove was 12 years old. The landlord also claims the fridge was left dirty and a vegetable drawer was broken. The washer and dryer were left dirty and the vent was clogged with lint and had been removed from the wall. There was also lint all over the walls and floor of the laundry room, the landlord also claims the stereo and television were not working. The landlord has estimated a cost of \$200.00 for the stove, \$40.00 for the fridge and \$50.to \$100.00 for the washer and dryer for cleaning materials and time spent cleaning but has not provided any receipts or clear photographic evidence of all the damage and/or cleaning required.

The landlord testifies that the tenant has caused excessive damage to the carpets in the suite which have had to be replaced at a cost of \$3,000.00 however as the carpets were 12 years old the landlord has reduced his claim to around \$400.00 to \$500.00. The landlord claims the carpets had some stains at the start of the tenancy but after this tenancy they were left in a worse condition. The tenant had left oil stains, urine spots from pets and shoe marks. All the carpets were very dirty and smelt badly. The landlord states that at the start of the tenancy he reduced the tenants rent for the first month to pay for the carpets to be cleaned which the tenant did..

The landlord seeks to keep the tenants security deposit of \$575.00 plus accrued interest of \$6.01 in partial satisfaction of his claim and recover his \$50.00 filing fee.

The tenant disputes the landlords allegations that he caused damage to the rental unit. The tenant testifies that the dry wall was already cracked in the kitchen. The tenant claims the suite was very dirty when he moved into the unit. The carpet was already very dirty and stained and although the tenant did clean it worse stains came through and the carpet was beyond cleaning at the start of his tenancy.

The tenant claims the furniture was already in a poor condition when he moved into the unit and the landlords' claims that he or his dog damaged the furniture are false.

The tenant claims that when he had to move the box spring bed for the landlords' contractors to do some work in the unit it a section of it broke. The tenant claims the dryer was not vented correctly in the ceiling and all the lint came back into the room. The tenant states he did move the vent as it was blocked and the landlord refused to repair it. The tenant claims the cleaning cycle was not working on the stove from the start of his tenancy and one element was missing. He also claims he left the fridge clean at the end of the tenancy.

The tenant claims he moved from the rental unit as the landlord did not inform him that the building was leaky and he had to endure 10 months of scaffolding, screening and repairs to building which affected his quality of life and left him with depression making it difficult to work. The tenant claims the landlord would not make any concessions on the rent during this time and he decided to cancel his rent cheque for October and left the unit on October 15, 2009.

The landlord states that at an annually general meeting it was decided that remedial work was required to the building. The work began and he agrees that scaffolding and screening was put around the building. The landlord states the tenant wanted a 60% reduction in his rent while work was taking place, however the landlord thought this was extreme and offered the tenant a 15% reduction instead. The landlord also offered the tenant a mutual end to the tenancy if he was not happy however the tenant decided to stay and his rent was increased in August 2009.

The landlord states that the move in condition inspection report indicates that the rental unit was in fair condition and the move out condition inspection report shows the damage to the unit and the cleaning required.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; with regard to the landlords claim to recover unpaid rent; section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. I find the tenant did not pay rent for October, 2009 on the day it was due and had no known right under the Act to deduct all or part of the rent. I also find the tenant did not return the keys to the rental unit until October 31, 2009. Therefore, I find in favor of the landlords monetary claim to recover the amount of **\$1,192.55** from the tenant.

With regard to the landlords claim for damages to the rental unit, site or property; I have applied a test for damages to the landlords claim as follows:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for damages does not meet all of the components of the above test. The landlord has submitted the Move in and Move out condition inspection reports and some photos of the condition of the suite. However, he has not established the actual amount required to rectify the damages to the furniture or carpet and for the cleaning of the suite and some of his photographs do not clearly show the damage to furniture in the suite. Consequently I dismiss this portion of the landlords claim with leave to reapply.

I Order, pursuant to Section 38, that the landlord may retain the full security deposit plus interest (**\$ 581.01**) towards the outstanding rent.

As the landlord has been partial successful with his claim he is entitled to recover the **\$50.00** filing fee from the tenant. A Monetary Order has been issued for the following amount:

Unpaid rent for October, 2009	\$1,192.55
subtotal	\$1,242.55
Less security deposit and accrued interest	(-\$581.01)
Total amount due to the landlord	\$661.54

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$661.54**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords claim for damages to the unit, site or property is dismissed with leave to reapply.

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 11, 2010.

Dispute Resolution Officer