

DECISION

Dispute Codes MNR MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid utilities, for damage to the unit, site or property, to keep all 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 Landlord to the Tenant, was sent via registered mail on November 1, 2009. The Tenant confirmed receipt of the hearing package.

The Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the Landlord, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord has not received the Tenant's evidence that was mailed to the Landlord on approximately March 8, 2010.

Issues(s) to be Decided

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

Background and Evidence

The one year fixed term tenancy began effective December 1, 2005 which switched to a month to month tenancy after November 30, 2006. Rent was payable on the first of each month in the amount of \$1,348.00 and the Tenant paid a security deposit of \$650.00 on October 31, 2005. The Tenant was responsible for paying 2/3 of the hydro and natural gas utilities and each month the Landlord would provide the Tenant with copies of the utility bills with the amounts owing listed on the bills.

The tenancy ended after the Landlord served the Tenant with a 1 Month Notice to End Tenancy for Cause with an effective date of September 30, 2009. The Tenant admitted that he over held and occupied the rental unit until October 4, 2009.

A move in inspection report was completed on December 28, 2005. The parties could not come to an agreement about the date the move-out inspection was performed however there was consensus that the Landlord did appear at the rental unit and began to do a walk through however no form was completed in the presence of the Tenant.

The Landlord is seeking \$164.03 from the Tenant which is comprised of \$79.43 for hydro and \$51.91 for natural gas for which the Landlord provided documentary evidence; plus \$179.73 for the four days of rent the Tenant occupied the rental unit for the period of October 1, 2009 to October 4, 2009.

The Tenant testified and agreed that he owed the Landlord the \$164.03 for utilities and \$179.73 for October 2009 rent and that he asked the Landlord to deduct the rent from the security deposit.

The Landlord is seeking \$1,772.24 in damages which is comprised of \$774.74 to repair the deck (\$549.74 for materials and \$225.00 for labour) plus \$997.50 to repair, sand, and resurface all of the hardwood floors in the main floor, an area of approximately 500 square feet.

The Tenant confirmed that he damaged the deck floor and that he had a verbal agreement with the Landlord's boyfriend that the Tenant would pay for 50% of the cost of materials it took to repair the deck floor. The Tenant argued that the deck was covered with a sheet of deck vinyl and the Landlord's boyfriend removed the vinyl and replaced it with a roll on product.

The Landlord confirmed that her boyfriend would often act as her agent and have dealings with the Tenant on her behalf. The Landlord advised that the vinyl deck flooring was a one piece unit that was installed in 2004 by her boyfriend. The Landlord argued that because the vinyl was a one piece unit it could not be repaired which is why the Landlord decided to go with the roll on product that could be repaired.

The Tenant acknowledged that he did cause damage to the hardwood flooring but only to two areas that measure approximately three feet by four feet. The Tenant argued that the scratches did not look like they do in the Landlord's evidence and it appears that they had been altered for the purpose of the photos because when the Tenant resided in the rental unit the scratches were barely noticeable. The Tenant admits that he is responsible for some of the damage but not to the expense of \$997.50.

The Landlord testified the floor was approximately 80 years old and she paid to refinish the floor back in 2004.

Analysis

All of the testimony and the Landlord's documentary evidence was carefully considered. The Landlord did not receive a copy of the Tenant's evidence, prior to the hearing; therefore I may only consider the Tenant's testimony and not his evidence, in accordance with #11 of the *Residential Tenancy Branch Rules of Procedure*.

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

Both parties have agreed that the Tenant owes the Landlord utilities of \$79.43 for Hydro and \$51.91 which totals \$131.34 and not \$164.03 as provided in the Landlord's testimony. Both parties also agreed that the Tenant owes \$179.73 for the prorated rent for October 1, 2009 to October 4, 2009 in accordance with the tenancy agreement. Based on the aforementioned I approve the Landlord's claim.

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.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. In this case the Tenant has argued that he

had a verbal agreement with the Landlord's boyfriend that the Tenant would pay 50% of the repair costs. The Landlord confirmed that her boyfriend has worked as an agent on her behalf.

The Landlord has claimed amounts for the deck coating, tools and equipment to apply the product, plus nine hours labour at \$25.00 per hour to apply the product to a deck that measured approximately 10' x 10'. The previous deck covering was approximately five years old, which is about half the useful life span of a deck covering and was a vinyl type product. The Landlord was not able to provide testimony in support of the cost of the vinyl product.

I note that it is not reasonable to pay someone professional rates for their labour and pay for them to acquire and retain the tools to complete the job. Based on the aforementioned I find that the Landlord has proven the test for damage or loss as listed above, and I approve her claim in the amount of \$325.00 which is comprised of \$250.00, a depreciated amount, towards the purchase of the product and \$75.00 for five hours of labour at \$15.00 per hour.

The evidence supports that the Tenant damaged approximately 5% of the hardwood floor and that it cost the Landlord \$350.00 plus GST to repair the damaged areas and \$600.00 plus GST to refinish the entire floor. I find the Landlord has proven the test for damage or loss and I approve her claim in the amount of \$399.00 which is comprised of \$350.00 repairs plus 5% of \$600.00 plus GST of \$19.00.

The Landlord has primarily been successful with her application therefore I award her recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and 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 utilities \$79.43 Hydro plus \$51.91 Natural Gas	\$131.34
Unpaid rent for October 1, 2009 to October 4, 2009	179.73
Deck repairs	325.00
Hardwood floor repairs	399.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,085.07
Less Security Deposit of \$650.00 plus interest of \$23.02 from October 31, 2005 to March 12, 2010	-673.02
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$412.05

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$412.05**. The order must be served on the respondent 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 12, 2010.

Dispute Resolution Officer