

DECISION

Dispute Codes OPB, MND, MNR, MNDC, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent, for damages to the rental unit, for money owed or compensation for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding. At the outset of the hearing the landlord confirmed that the tenants have moved out and as a result they abandoned their application for an Order of Possession.

Service of the hearing documents was done in accordance with section 89 of the *Act*. The landlord filed his application on February 01, 2010 and had three days to serve the tenant with Notice of this hearing. The landlord did not serve the tenant until February 10, 2010 by registered mail. He tenant confirmed receipt of the hearing documents and had opportunity to respond before the hearing was scheduled. I find therefore that the tenant was sufficiently served for the purposes of this Act and the hearing continued.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party and witness. 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 unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for money Owed or compensation for damage or loss?

Background and Evidence

This tenancy started on December 01, 2007 and ended when the tenant vacated the property on January 05, 2010. Rent for this basement suite was \$650.00 per month and was due on the first of each month. The tenant paid a security deposit of \$325.00 on November 16, 2006. The tenant gave the landlord his forwarding address in writing on January 24, 2010. No Move in or Move out condition inspections were completed.

The landlord testifies that the tenant moved from the rental unit on January 05, 2010 and did not give correct notice to end the tenancy and did not pay rent owed for January, 2010. The landlord stated that he had given the tenant a One Month Notice to End Tenancy and expected the tenant to move from the rental unit by January 15, 2010. The landlord therefore seeks rent up to January 15, 2010.

The landlord states the tenant caused damage to the rental unit. The landlord states the tenant fell and crackled some tiles in the bathroom in July, 2009 and did not inform him until October, 2009. Because of this, water got behind the tiles and damaged the dry wall. By the time the landlord was informed of the damage and got a repairman in to look at the damage the water had caused so much damage behind all the tiles that they had to be replaced along with the dry wall. The landlord states that the tenant caused damage to the walls in the living room with a sofa chair and in the bedroom by the mattress. The walls have nails in them and there are 30 holes in the bedroom caused by thumb tacks. The landlord claims the tenant agreed to pay half the cost of the bathroom repairs and then changed his mind.

The landlord testifies that at the end of the tenancy the tenant did not do a thorough clean of the rental unit and had left the stove top dirty with burnt on residue. The doors, cabinets, and hood were all greasy and dirty and windows were left dirty with mildew. The landlord seeks a Monetary Order for the unpaid rent, cleaning and damages to a total sum of \$1,190.00. The landlord seeks to keep the tenants security deposit in partial payment of these damages but has not made an application to keep this.

The tenant testifies that he was served a One Month Notice to End Tenancy on December 12, 2009. Neither party has provided this Notice in evidence. The tenant states that his family were coming to stay with him from overseas and he needed a place for them to live. He contacted his brother who was the former tenant of the landlord and his brother negotiated with the landlord to extend the time the tenant could stay at the unit until February 01, 2010. The tenant states that

on Christmas Eve, 2009 the landlord turned off the heating to the unit. The tenant had to borrow heaters from friends to keep the place warm as he had a 10 month old baby.

The tenant states that he spoke to the landlord who told him he wanted the basement suite for his office and he wanted the tenant to move out. The tenant also states the landlord told him he would make his life miserable as long as he lived there. The tenant states the landlord told him he would disable the tenants' laundry service from January 01, 2010. The tenant states he had no option but to look for alternative accommodation as he could no longer continue to live in this unit with no heat or laundry facilities. He states he found somewhere else and moved from the rental unit on January 03, 2010. He returned to do the final clean and return the keys on January 05, 2010.

The tenant testifies that he did slip in the bathroom and cracked two tiles in July, 2009. He states that he informed the landlord of this damage. The tenant states the landlord did not take any action to repair the damage despite multiple phone calls. The tenant states the landlord kept promising he would look at the tiles and make repairs but never did until December, 2009. The landlord asked the tenant to pay half the repair costs but the tenant states he refused as it was not his responsibility to renovate the bathroom, the tiles were already old and it had taken the landlord over five months to make the repairs which resulted in more damage being caused to the bathroom.

The tenant claims he cleaned the unit at the end of his tenancy. He asked the landlord to do a walk through with him but the landlord did not do an inspection or notify the tenant that extra cleaning was required.

The landlord testifies that he did not turn off the heat to the tenants unit. He did turn it down as the tenant had turned the heat up so high the landlords children could not sleep.

The tenants witness was called to give his evidence. The tenant asked his witness if the landlord had turned the heat off. The tenants witness states that the heat was turned off and he had also had the same problem with the landlord turning the heat off when he was a tenant living in the rental unit. The witness states the tenant had to borrow heaters from friends to keep the unit warm.

The tenants witness states that he negotiated with the landlord on behalf of the tenant to extend the time for the tenant to leave the rental unit. The witness states that the landlord wanted the tenant out by January 15, 2010 but agreed that if the tenant could not find new accommodation he could stay until February 01, 2010. The witness states that he also asked the landlord if the tenant moved out by the end of January, 2010 would the landlord overlook any problems he had with the tenant.

The landlord testifies that he told the tenants witness that if the tenant moved out by January 15, 2010 he would not charge him for damages but would charge him for 15 days rent for January, 2010.

Analysis

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if he has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. In this case both Parties agree that no inspections were conducted either at the beginning or end of the tenancy. Therefore, I have applied a test for damage and loss claims 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 landlord 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 landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the landlord 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 or money owed or compensation for damage or loss does not meet all of the components of the above test. The landlord has not submitted sufficient evidence to support his claim that the tenant caused any damage to the rental unit and has not shown how he attempted to mitigate his loss in connection with the damage to the tiles in the bathroom. I find if the landlord did not act in a timely manner to rectify the damage to the tiles when the tenant first notified him that two tiles were cracked. If the landlord had dealt with this issue in July, 2009 he could have mitigated his additional costs for the repairs to the bathroom. Consequently I dismiss the landlords claim for damages to the rental unit without leave to reapply

With regard to the landlord claim that the tenant did not clean the rental unit at the end of the tenancy; the landlord has proved no evidence to support this claim and his claim is dismissed without leave to reapply.

With regard to the landlords claim for unpaid rent for 15 days in January 2010; Section 26 of the Act states that a tenant must pay rent on the day it is due under the tenancy agreement, whether or not the landlord has complied with the Act, the regulations or the tenancy agreement. Therefore, I find the tenant was not at liberty to withhold rent and the agreement with the landlord was that he had until January 15, 2010 to move from the rental unit. As the tenant moved and returned the keys to the unit by January 05, 2010 he is still obligated to pay rent up to the end of the agreed term of January 15, 2010. Consequently, I uphold the landlords' application to recover 15 days of rent for January, 2010 to a sum of **\$314.51**.

Section 72(2)(b) of the Act gives the director the ability to make an order offsetting money owed to the landlord from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I **order** the landlord to keep the tenants' security

deposit of **\$325.00** and accrued interest of **\$10.03** to offset against the amount owed to the landlord from the tenant.

As the landlord has only been partial successful with his claim I find he is entitled to recover half the filing fee from the tenant of **\$25.00**. A Monetary Order has been issued for the following amount:

15 days unpaid rent January, 2010	\$314.51
Subtotal	\$339.51
Less security deposit and accrued interest	(-\$335.03)
Amount due to the landlord	\$1.48

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 **\$1.48**. The order must be served on the respondent and is enforceable through the Provincial Court 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 16, 2010.

Dispute Resolution Officer