

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; damages or loss under the Act, regulations or tenancy agreement; retention of the security deposit; and, recovery of the filing fee. The landlord made an application against two co-tenants and neither tenant appeared. Upon enquiry, the landlord stated that a forwarding address was provided by only one tenant and only that tenant was served with notification of this hearing by registered mail. The landlord requested this application be amended to name only the tenant served with notice of the hearing and I accepted the amendment. Accordingly, this decision reflects the name of only one tenant.

The landlord provided documentary evidence with respect to the registered mail sent to the tenant that was recorded as being "refused by recipient" by Canada Post. Having been satisfied that the tenant was notified of this hearing in a manner that complies with the requirements of the Act, I proceeded to hear from the landlords without the tenant present.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Retention or return of the security deposit.

Background and Evidence

The landlord provided undisputed testimony as follows. The tenancy commenced in May 2008 and the tenant paid a \$1,000.00 security deposit at the commencement of the tenancy. The tenant was required to pay rent of \$2,000.00 on the 1st day of every month. There is no written tenancy agreement. The tenant gave notice to end tenancy effective September 30, 2009 on September 2, 2009. A move-in and move-out inspection report were prepared. The tenant wrote five cheques that were returned for insufficient funds. The tenant damaged the hardwood flooring causing three 12' sections to need replacement. New flooring had been installed immediately before the tenancy began. The tenants vacated the rental unit October 2, 2009 and the unit was re-rented November 1, 2009.

In making this application, the landlord requested compensation of \$2,000.00 for loss of rent for October 2009, \$600.00 for hardwood flooring repairs and \$750.00 for five returned cheques. In support of these claims, the landlord provided a copy of bank statements showing returned cheques and an invoice to repair the hardwood floors at a cost of \$600.00.

Analysis

Where a party makes a claim for monetary compensation against another party, the party making the application has the burden to prove the claim. The burden of proof is based on the balance of probabilities. Sections 7 and 67 of the Act provide for awards for compensation and in accordance with those sections, in order for a party to succeed in a monetary award against another party, I must be satisfied of the following:

1. The other party violated the Act, regulations or tenancy agreement;
2. The violation caused the applicant to incur damages or loss;
3. Verification of the amount of the damage or loss; and,
4. The applicant did whatever was reasonable to mitigate their damage or loss.

I accept that the tenant wrote five NSF cheques to the landlord; however, as the landlord was informed during the hearing, a landlord is entitled to recover the service fee charged by the landlord's financial institution for the returned cheque or an administration fee of \$25.00 per cheque where the tenancy agreement provides for that administration fee. I was not provided evidence that the tenancy agreement provided for an NSF administration fee. The bank statements provided by the landlord show that the landlord was charged service charges of \$5.00 on five occasions by the landlord's financial institution. Therefore, I find the landlord has established an entitlement to recover \$25.00 (5 x \$5.00) from the tenant for NSF cheques.

With respect to the hardwood flooring claim and the claim for loss of rent, I found the landlord did not provide strong documentary evidence in support of these claims. It is upon each party to provide sufficient evidence to substantiate their claim. In this case, the landlord did not provide evidence of the notice to end tenancy given by the tenant, evidence of advertising efforts undertaken by the landlord, photographs of damage to the rental unit or a copy of the inspection reports the landlord claimed were prepared. Further, the repair invoice is not identified as paid and there is no other evidence that the invoice was paid by the landlord.

Despite the weaknesses in the landlord's claims, the landlord's evidence indicates that the landlord had informed the tenant of the claims against the tenant and included a copy of the repair invoice in the package sent to the tenant for this hearing. I accept that the tenant has chosen not to respond to the claims being made by the landlord.

In weighing all of the factors of this case, I am satisfied that there was some damage to the hardwood flooring by the tenant; however, in the absence of proof of payment for the repairs and evidence of advertising efforts to re-rent the unit, I find an appropriate award to the landlord to be the amount of the security deposit.

Conclusion

The landlord was partially successful in this application and has been authorized to retain the tenant's security deposit in satisfaction of the landlord's claims against the tenant.

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 02, 2010.

Dispute Resolution Officer