

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with the landlord's application for a Monetary Order for compensation for damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. The landlord provided evidence that the tenant was served with the amended hearing documents by registered mail. The tenant did not appear at the hearing; however, the tenant sent a written submission to the Residential Tenancy Branch one day before the date of the hearing to provide her position and state she could not be in attendance at the teleconference call. The landlord stated she was not served the tenant's submission. I accepted the tenant's written submission in the tenant's absence and read the submission to the landlord and gave the landlord an opportunity to respond to it.

The landlord requested I consider an amendment to the landlord's application to include rental arrears of \$44.58. I have declined the landlord's request on the basis that the tenant has not been provided the opportunity to respond to that claim.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant and if so, the amount?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The landlord testified that the tenancy commenced on March 1, 2005 and ended October 31, 2009. A \$300.00 security deposit was paid at the beginning of the tenancy.

Pursuant to a previous dispute resolution decision (file no. 718037) the rent was increased to \$800.00 per month effective April 1, 2009. On October 2, 2009 the landlord received a notice to end tenancy from the tenant effective October 31, 2009. The tenant vacated the rental unit by October 31, 2009.

In making this application, the landlord is seeking to recover the following amounts from the tenant:

Loss of rent for November 2009	\$ 800.00
Remove abandoned property	175.00
Re-keying costs	104.82
Cleaning	<u>120.00</u>
Total claim	\$ 1,199.82

The landlord submitted invoices and condition inspection reports in support of the landlord's claim. The landlord testified that the tenant was not present during the move-out inspection. The landlord claims that a message was left for the tenant about scheduling a move-out inspection but that the tenant had changed her telephone number and it was discovered after the tenancy ended that the tenant did not receive the landlord's message. The landlord was of the position the tenant did not provide the landlord with a current telephone number or contact the landlord about scheduling a move-out inspection. The landlord did not serve a Notice of final opportunity to schedule an inspection upon the tenant. The landlord attended the property twice on October 31, 2009 and neither time was the tenant present.

Upon enquiry, the landlord testified that the tenant gave late notice to end the tenancy and the unit was not rented for November 2009. The landlord claims to have posted the unit for rent on its own website but that invoices for newspaper advertisements were not received until December 2009. The landlord stated there is high vacancy rate in the area of the rental unit. The landlord acknowledged the owner was renovating the rental unit in November 2009 after it was determined that replacement tenants would not be

found for November 2009. New tenants were found for February 1, 2010 and the landlord is receiving the same rent now for a renovated unit.

The tenant submitted that notice to end the tenancy was issued October 1, 2009 and the tenant was of the belief this was sufficient notice. The tenant questions why she should pay for loss of rent for November 2009 when the unit was being renovated. The tenant acknowledged she left large items behind in the rental unit and expected to be charged for the removal of those items. The tenant claims that the unit was old and dirty when she moved in. The tenant acknowledged that she did not clean the oven.

The landlord's claim for cleaning does not include cleaning costs for the stove, lights and windows in the bedrooms to reflect the dirty condition noted on the move-in inspection report. During the hearing, the landlord reduced the cost for re-keying to \$97.38. The landlord did not agree with the tenant's submission that only the oven was unclean but was of the position that the unit was very dirty.

The tenant made no submission concerning the charge for re-keying.

Analysis

Where a tenant wishes to end a month-to-month tenancy, the Act requires that the tenant give at least one full month of notice. To end a tenancy effective October 31, 2009 the landlord would have to receive the tenant's notice no later than September 30, 2009. In this case, the landlord received the tenant's notice after September 30, 2009; therefore I am satisfied the tenant violated the Act by giving insufficient notice.

Although I have found the tenant violated the Act with respect to giving notice to end the tenancy, the landlord must show that it did whatever was reasonable to minimize any loss that may have resulted from the violation. Having heard the unit was being renovated in November 2009 and that the newspaper advertising did not commence for several weeks after the tenant gave notice, I am not satisfied the landlord did whatever

was reasonable to minimize the loss of rent for November 2009. Doing whatever is reasonable to minimize loss also includes lowering the asking rent where there are high vacancy rates. Having heard the landlord renovated the unit and has obtained the same rent that was being paid by the tenant would lead me to conclude that \$800.00 was high for the condition of the rental unit as of November 1, 2009. In light of these considerations, the landlord's request for loss of rent for November 2009 is dismissed.

As the tenant acknowledged leaving behind a few large possessions I award the removal costs of \$175.00 to the landlord.

Upon review of the cleaning quote and the move-out inspection report, I am satisfied the unit needed additional cleaning. The Act requires the unit be left reasonably clean at the end of the tenancy. There is no provision that exempts this requirement of the Act. If a unit is unclean at the beginning of the tenancy, the tenant is at liberty to raise this issue with the landlord at that time. Therefore, I award the landlord additional cleaning costs of \$120.00.

Upon review of the move-out inspection report I do not find any notation about keys or a door that need to be rekeyed. The landlord did not provide an explanation in the evidence package or application as to why the landlord is claiming rekeying costs from the tenant. I also note that only a portion of the locksmith invoice relates to rekeying costs and the balance relates to items I consider to be repairs and maintenance. I do not find the landlord substantiated an entitlement to claim rekeying costs from the tenant or the amount being claimed by the landlord for rekeying costs. I dismiss the landlord's claim for rekeying costs.

As the landlord was only partially successful in this application, I award the landlord a portion of the filing fee equivalent to the proportion of the claim awarded to the landlord. I award the landlord \$12.29 of the \$50.00 filing fee paid for this application.

The landlord is in possession of the tenant's security deposit and accrued interest which I calculate to be a total of \$310.62. The security deposit and interest is applied to the amounts awarded to the landlord and I calculate a balance owing as follows:

Removal of tenant's possessions	\$ 175.00
Cleaning	120.00
Filing fee	12.29
Less: security deposit and interest	<u>(310.62)</u>
Balance	\$ (3.33)

I consider the balance owing to the tenant insignificant and I do not issue a Monetary Order. I consider this claim resolved by the landlord's retention of the tenant's security deposit.

Conclusion

The landlord was partially successful in this application and has been authorized to retain the security deposit and interest in satisfaction of this claim.

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 26, 2010.

Dispute Resolution Officer