

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed on the following facts. The tenancy began on April 15, 2009 and ended on July 31, 2009. Monthly rent was set at \$1,500.00 per month and the tenant paid a \$750.00 security deposit at the outset of the tenancy. A condition inspection report was not performed either at the beginning or at the end of the tenancy. The tenant was served with a one month notice to end tenancy on June 15. The tenant did not pay rent in July.

The landlord testified that the tenant's dog urinated on the carpets throughout the unit and that he had to remove and discard the carpets, which he replaced with flooring. The landlord further testified that the tenant left a large number of holes in the walls, damaged kitchen cabinets and locks and left garbage in the garage and outside the unit. The landlord stated that the garbage left outside the unit was left for pick up by the city's garbage collection service, but that the bags were torn apart by animals requiring him to clean it up. The landlord testified that in addition to replacing the carpets he had to repaint the unit, perform repairs and remove garbage. The landlord argued that he was unable to re-rent the unit in the months of August and September because it took him 4 weeks for him to complete repairs. The landlord seeks to recover the cost of

materials and labour as well as unpaid rent for July, loss of income for August and September and the filing fee paid to bring his application.

The tenant denied that her dog had urinated on the carpets and argued that the landlord's plumber had created the holes in the walls. The tenant testified that the carpets in the rental unit had been badly soiled at the time she moved in and further testified that the kitchen cabinets were faulty throughout the tenancy. The tenant acknowledged that she did not pay rent in July and acknowledged that she had left items inside the garage as well as garbage outside the rental unit for pick up by the city.

Analysis

The landlord bears the burden of proving his claim on the balance of probabilities. Although the landlord provided some photographs, they show some of the walls of the rental unit and garbage left in the garage and outside. Other than his oral testimony which was disputed by the tenant, the landlord provided no evidence as to the condition of the unit at the time the tenancy began. I find that the landlord has failed to prove that the carpets were damaged beyond what might be considered reasonable wear and tear and I dismiss his claim for the cost of replacing the carpets. I find that the landlord has further failed to prove that the cabinets or locks were damaged beyond what might be considered reasonable wear and tear and I dismiss that claim. I find that the garbage left by the tenant for pick up by the city was appropriately bagged and that she cannot be held responsible for the bags having been ripped by animals. I find that the tenant left garbage in the garage which the landlord had to remove. I find that an award of \$50.00 will adequately compensate the landlord and I award the landlord that sum. The tenant did not argue that the walls of the unit were damaged throughout the tenancy, but that they were created by the plumber. The landlord acknowledged that a plumber attended the rental unit on three occasions in repeated attempts to repair leaking pipes. Having viewed the landlord's photographs, only one of the damaged areas would appear to be consistent with a plumber creating a hole to access pipes, this area being the square area at the bottom of a wall which has clearly been cut away. The other damaged areas are high enough that it seems unlikely that pipes would be behind them

and I find that those areas were more likely than not damaged by the tenant. I find that an award of \$250.00 will adequately compensate the landlord for the labour and materials to repair and repaint those areas and I award the landlord that sum. I find that the landlord is entitled to recover unpaid rent for the month of July and I award the landlord \$1,500.00. The landlord was aware that the tenancy would be ending on July 31 but appears to have made no attempt to re-rent the unit until mid-August. I find that the landlord did not take reasonable steps to mitigate his losses and accordingly dismiss the claim for loss of income for August and September. As the landlord has enjoyed only partial success in his claim I find that the landlord may recover one half, or \$50.00 of the filing fee paid to bring his application.

Conclusion

In summary, the landlord has been successful in the following claims:

Garbage removal	\$ 50.00
Repair of wall damage	\$ 250.00
Unpaid rent for July	\$1,500.00
Filing fee	\$ 50.00
Total:	\$1,850.00

I order that the landlord retain the deposit and interest of \$750.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: March 04, 2010
