

Decision

Dispute Codes: MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for damage to the unit, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act

Background and Evidence

A copy of the written tenancy agreement was not in evidence for the fixed term tenancy from November 1, 2008 to October 31, 2009. Rent in the amount of \$1,150.00 was payable in advance on the first day of each month. A security deposit of \$575.00 was collected at the outset of tenancy. A move-in condition inspection and report were completed on November 18, 2008, a copy of which is not in evidence.

There is no dispute between the parties that the tenants provided proper written notice of their intent to end the tenancy at the close of the fixed term. Neither is there a dispute around whether the landlord filed an application for dispute resolution within 15 days after being informed by the tenants in writing of their forwarding address, as required by the Act.

The parties present differing views around what understandings had been reached or what arrangements had been made in relation to completing a move-out condition inspection and report. Ultimately, however, the landlord undertook to complete the inspection and report in the absence of the tenants. The landlord testified that she forwarded a copy of the report to the tenants after being informed of their forwarding

address. While a copy of this report is not in evidence, the landlord submitted copies of photographs taken inside the unit after the tenants had vacated.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve at least a partial resolution.

Agreement reached was limited to the matter of cost incurred by the landlord to have the carpets cleaned; in short, the tenants agreed that the landlord could deduct \$183.75 from the security deposit in this regard.

Analysis

In relation to documentary evidence that the parties wish to rely on at a hearing, attention is drawn to the Residential Tenancy Branch Rules of Procedure. Rule # 3.4 speaks to “Evidence to be filed with the Application for Dispute Resolution,” as follows:

3.4 To the extent possible, the applicant must file copies of all available documents, photographs, video or audio tape evidence at the same time as the application is filed.

Rule # 3.5 addresses “Evidence not filed with the Application for Dispute Resolution,” and provides, in part, as follows:

3.5 (a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least five (5) days before the dispute resolution proceeding as those days are defined in the “Definitions” part of the Rules of Procedure.

(b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and

served on the respondent at least two (2) days before the dispute resolution proceeding.

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides as follows:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities, that the parties had reached an understanding that a move-out condition inspection and report would be required on the last day of tenancy, and prior to the tenants vacating the unit. I find that the landlord was present at the unit on October 31, 2009 from approximately 9:00 a.m. to 4:00 p.m. and that the tenants made no appearance at the unit during that time.

I address the landlord's claims and my findings around each as follows:

\$380.00: labour required for cleaning. While there are photographs in evidence, in the absence of a copy of the move-in and move-out condition inspection reports in evidence, I find that the landlord's claim is limited to **\$320.00***, calculated on the basis of 16 hours (two days) of labour at \$20.00/hour.

\$67.62 (\$45.23 & \$22.39): cleaning materials. Related to the above reference to an absence of condition inspection reports in evidence, I find that the landlord's entitlement is limited to \$33.81*, which is half the amount claimed.

\$47.02 (\$12.70 & \$34.32): miscellaneous batteries and bulbs. As above in relation to the absence of condition inspection reports, I dismiss this aspect of the landlord's claim. Further, I draw the attention of the parties to Residential Tenancy Policy Guideline # 1 which speaks to "Landlord & Tenant – Responsibility for Residential Premises," and which provides as follows under the heading, **Smoke Detectors**:

If there are smoke detectors, or if they are required by law, the landlord must install and keep smoke alarms in good working condition. Regular maintenance includes:

- annual inspection of the system
- annual cleaning and testing of the system
- replacing batteries at least annually and according to the manufacturer's instructions.

\$183.75*: carpet cleaning. As above, pursuant to the agreement reached between the parties during the hearing, I find that the landlord is entitled to the full recovery of this particular cost.

\$20.16*: replacement of keys not returned at end of tenancy. Based on the testimony of the parties I find that all keys provided at the outset of tenancy were not returned at the end of tenancy. Accordingly, I find that the landlord has established entitlement to the full recovery of this cost.

\$207.61: replacement of master bedroom closet doors. The landlord testified that these were in excess of 20 years old. Residential Tenancy Policy Guideline # 37 speaks to the "Useful Life of Work Done or Thing Purchased." As to "doors"

and “finishes” on panelling, the general guide is for a useful life not in excess of 20 years. Accordingly, I dismiss this aspect of the landlord’s claim.

\$1,150.00: loss of rental income for November 2009. The landlord testified that advertising for new renters began almost immediately after proper notice to end tenancy was given by the tenants. Further, the landlord documented that a lease was signed on November 15, 2009 for new renters to take possession effective December 1, 2009. I find that the landlord has not met the burden of proving, on a balance of probabilities, that the tenants are responsible for leaving the unit in a condition sufficient to delay rental of the unit by one month. Accordingly, this aspect of the landlord’s application is hereby dismissed.

\$50.00*: filing fee. As the landlord has achieved some success in this application, I find she is entitled to recovery of this fee.

In summary, as for the monetary order, I find that the landlord has established a claim of \$607.72*. I order that the landlord retain the security deposit of \$575.00, plus interest of \$1.44, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$31.28 (\$607.72 - \$576.44).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of \$31.28. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 28, 2010

Dispute Resolution Officer