

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage or loss under the Act, regulation or tenancy agreement, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application. Both parties appeared and gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence.

At the outset of the hearing, the landlord applied to amend his application to change his claim for advertising from \$250.00 to \$575.00. The amendment was allowed.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to keep all or part of the security deposit in partial satisfaction of the claim?

Background and Evidence

This tenancy began on March 13, 2009 as a fixed term tenancy to expire on March 31, 2010. Rent in the amount of \$2,000.00 is payable on the 1st day of each month, and on April 1, 2009, the tenant paid a security deposit in the amount of \$1,000.00. The tenant paid a pro-rated amount of rent for March, 2009 in the amount of \$1,161.36, and the landlord has carried the 36 cents as a credit on this tenant's account.

The rented unit is a 3 bedroom townhouse, and the landlord is the owner of 17 units within that complex.

The tenant vacated the unit on October 31, 2009, having paid \$1,000.00 for rent for that month, and the landlord is claiming \$1,000.00 for rent for the month of October, 2009, as well as \$2,000.00 for loss of revenue for November, 2009, \$35.00 for an N.S.F. fee and \$50.00 for late fees for October and November, 2009. The landlord is also claiming \$575.00 for advertising expenses to re-rent the unit, but is not making any claim for damages.

The landlord testified that the tenant did not leave a forwarding address, and had given verbal notice of her intention to vacate sometime in October. The first advertisement was placed in the Times Colonist local newspaper on October 29, 2009. The unit was not re-rented until December 1, 2009.

The tenant testified that the tenancy was wrong from the beginning. She wanted an inspection done on the move-in date because there were marks on the floor that the tenant did not want to be held responsible for. She stated that she asked the landlord 4 or 5 times, but it was never done.

The tenant also testified that blinds were to be included in the unit, but had to wait 6 weeks for them to be installed. Further, the dishwasher was broken when she moved in, and the landlord promised to get it fixed, but it took approximately 1 month after she moved in. The landlord responded that the dishwasher was under warranty with the Hudson's Bay Company, and he had to wait for their repair person; that it was not a delay on his part.

She also testified that a massive leak existed on the outside of the residence, and as a result, she could not use that part of her yard. That issue was never resolved. Further, parking was also an issue, in that the other tenants parked anywhere, and there was no place for her guests to park near her residence.

A further difficulty in the tenancy was described by the tenant in that drug dealers lived next door to her unit, and people would walk into her house by mistake. That was rectified by a police raid that resulted in people from that residence being arrested with hand-guns in the residence.

The tenant testified that she gave verbal notice to vacate the unit on October 1, 2009 and a note with only half of the month's rent because she did not trust the landlord to return her security deposit. She cleaned the carpets, and asked the manager to a move-out condition inspection, but he declined to do so. She also testified that on October 5, 2009 a perspective tenant was shown the residence, was pleased with the unit and viewed it again with her husband. The manager told the tenant that these perspective tenants were going to rent the unit on November 1, 2009. When questioned about when the new tenants moved in, the landlord stated that he did not know the answer.

The tenant admitted that a cheque for her rent was returned by the bank marked "NSF" and agrees that the tenancy agreement contains a \$35.00 fee for NSF cheques.

Analysis

In the circumstances, I have difficulty finding that the landlord mitigated his loss for the fixed term of the tenancy, and have no evidence before me that the landlord paid \$575.00 for placing ads in the newspaper. The landlord was not able to confirm when the rental unit was re-rented, and has, therefore, failed to prove that he suffered any loss as a result of the tenancy ending early.

With respect to the outstanding rent, the *Residential Tenancy Act* states that:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant did not have any right under the *Act* to deduct a portion of the rent for the month of October, 2009. I further find that the tenant is required, under the tenancy agreement to pay the \$35.00 NSF fee, as well as \$25.00 for late rent for the month of October, 2009.

Conclusion

For the reasons set out above, I find that the landlord has established a claim for \$1,000.00 in unpaid rent, \$35.00 for the NSF fee and \$25.00 for the late fee for the month of October, 2009.

The landlord's claim for \$575.00 for advertising expenses is hereby dismissed without leave to reapply. The landlord's application for loss of revenue for November, 2009 and the \$25.00 late fee for that month, are hereby dismissed without leave to reapply.

I order that the landlord retain the deposit and interest of \$1,000.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$110.00. This order may be filed in the Small Claims Court and enforced 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: April 07, 2010.

Dispute Resolution Officer