

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call this date to deal with cross-applications by the tenants, for return of the security deposit; and by the landlord, for a monetary order for damage to the unit and unpaid utilities, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the tenant for the cost of this application.

Both parties attended, gave affirmed evidence and were given the opportunity to cross-examine each other on their evidence.

Issues(s) to be Decided

Is the tenant entitled to return of the security deposit?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on April 13, 2009, and ended on December 7, 2009 when the tenants vacated the unit. The tenants had moved into the unit with another tenant who is not a party to this application. On April 15, 2009, the tenants paid \$225.00 toward the security deposit, and another \$200.00 on June 1, 2009. The landlord gave the previous tenant back \$200.00 of that deposit on June 30, 2009, and the tenants in this application re-paid that \$200.00 on July 29, 2009.

Rent in the amount of \$850.00 is due on the 1st day of each month, and there are currently no rental arrears. The rented unit is a suite in a 4-plex type of house that is about 50 years old.

The landlord is claiming \$622.65 for outstanding utilities that the landlord paid when the tenants didn't. The landlord is also claiming \$77.98 for the cost of changing the locks to the unit, \$100.00 for carpet cleaning, and \$1,538.00 to replace doors in the unit, \$1,470.00 for plaster and wall repair and painting, as well as \$50.00 for the cost of filing this application.

The parties' evidence is that the tenants gave verbal notice of their intention to move out on December 4, 2009 and vacated the unit on December 7, 2009. The landlord was able to re-rent the unit on January 1, 2010. The landlord did not receive a forwarding address for the tenant until she received notice of this application.

The landlord provided a copy of an electric bill covering the period of May 29 to July 8, 2009 which had a balance owing from the previous billing period of \$319.90 and an additional \$48.68 for this billing period, totalling \$368.58 which the landlord paid. The tenant states that the previous tenant told her that her share of the utilities was \$200.00 and the tenant paid that amount to that previous tenant. The landlord stated that it hadn't been paid, and she paid the entire amount, and provided a receipt for \$368.58. Another utility bill in the amount of \$166.48 was paid by the landlord, which covers the period of October 30 to December 14, 2009. A third bill was provided in the amount of \$88.59, which the landlord paid. The landlord testified that the City sends those bills to the landlord if they remain unpaid by the tenants. The tenant testified that she contacted the City to determine what utilities were outstanding, and she was told there were none.

The landlord testified that there was significant damage to the unit when the tenants moved out. There were cigarette burns on the bedroom carpet and plaster needed to be fixed due to holes on the walls, and the entire unit required painting. Further, 2 inside doors had large holes in them. The tenant does not dispute that she and her husband are responsible for the holes in the doors, but questions the cost claimed by

the landlord. The landlord testified that the doors are hollow wooden doors, and are likely the original doors in the 50 year old house. However, in order to replace them to match the rest of the doors in the residence, the cost quoted was \$269.99 each plus \$5.00 in modifications, and applicable taxes. The tenant stated that she could replace the doors for \$40.00 or \$50.00 from Rona. The landlord stated that she would even accept \$50.00 per door for 5 doors so that they could all match. Both parties agree that the doors were old, but were not damaged prior to this tenancy.

The tenant also testified that the previous tenants were responsible for the damage to the walls and for the cigarette burns on the bedroom carpet, which was not disputed by the landlord.

When the tenants vacated the unit, they did not leave the keys. The tenant testified that she intended to go back and take pictures because she did not have her camera with her when she cleaned the unit, but when she arrived on December 18, 2009, the locks had been changed. The landlord testified that it was winter time and she had to get a locksmith to drill the locks in order to access the apartment, and provided an invoice in the amount of \$77.98 dated December 18, 2009. The tenant testified that she and her husband moved into their new accommodation on December 7, 2009.

The landlord is also claiming \$100.00 for carpet cleaning, but the bill provided shows that it cost either \$25.00 or \$75.00. I find it difficult to believe that it only cost \$25.00 to clean carpets by a professional cleaning company, and I accept that the cost was \$75.00.

A move-in condition inspection report was done, but it only states what the tenant is responsible for at move-out, not what actual condition the unit was in at the time the tenants moved in. That report is signed by the tenant and dated April 13, 2009.

Analysis

Firstly, I find that the landlord made an application for dispute resolution within the 15 days of receiving the tenants' forwarding address in writing as required under the *Residential Tenancy Act*.

With respect to the utilities, I accept the evidence of the tenant that she gave her previous room-mate \$200.00 as her share, however, I also accept the evidence of the landlord that the utilities did not get paid and she was obligated when the tenants did not make that payment. The first bill shows that the billing date was September 8, 2009, with the previous reading date being May 29, 2009 and the present reading date was July 8, 2009. It also shows a previous balance of \$319.90, and current charges for \$48.68 for 40 days of service. This tenant did not move in until April 13, 2009, and I do not have a copy of the previous bill. A portion of that bill cannot be determined to be the responsibility of these tenants. As a result, I find that it's necessary to pro-rate the bills. Also, the bill dated January 5, 2010 includes a \$25.00 connection fee, which I cannot determine to be the responsibility of the tenants. I find that the tenants in this dispute are responsible for \$48.68 for the current charges on the first bill of \$368.58, as well as \$55.98 for April 13 to May 28, 2009. I also find that the tenants are responsible for the second bill for \$165.48. Because the landlord was able to re-rent the unit for January 1, 2010, I have calculated the tenant's responsibility for the 3rd bill to be the amount of \$71.71, less the \$25.00 connection fee, which totals \$46.71. It is not up to the Residential Tenancy Branch or the Dispute Resolution Officer to complete forensic accounting with respect to utilities owing, and I find that the landlord has failed to prove that the tenants in this dispute are responsible for all bills presented. I award a total amount of \$316.85 for utilities, and the balance claimed is hereby determined to be the responsibility of the previous tenant or the landlord.

I accept the evidence of the tenant that she didn't have her camera with her to take pictures when cleaning the unit, but I also find that the tenant did not go back to the unit to take pictures until 11 days after she vacated the unit, and as such, the landlord had a right or even an obligation to change the locks on the unit, and I award the landlord \$77.98 for that cost.

I accept the evidence of both parties that the doors were in good shape when the tenants moved in, and 2 doors were indisputably damaged by the tenants. The unit would not have required new doors if these 2 doors had not been damaged, and I agree with the landlord that the tenants' wilful actions should not prevent the landlord from having matching doors in her rental property. However, the landlord has some responsibility for normal wear and tear and depreciation, and the Residential Tenancy Policy Guideline states that doors have an expected useful life of 20 years. Further, awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. The landlord stated that she would accept \$50.00 per door for the 5 doors in the residence, and in the circumstances, I find that that is a fair amount because of the willful damage.

With respect to the cost of plaster and painting, and for cleaning the carpet, I am satisfied that the landlord paid \$75.00 for that cleaning, however, there was no inspection report done when the tenants vacated the unit and the report done at the beginning of the tenancy does not specify what condition the unit was in when the tenants moved in. The *Residential Tenancy Act* requires that the landlord provide the tenant 2 opportunities to inspect the unit before another tenant moves in, and that both parties sign that report.

Conclusion

For the reasons set out above, I hereby grant the landlord for a monetary order for utilities owed by the tenants at \$316.85.

The landlord's application for locksmith service is hereby awarded at \$77.98.

The landlord's application for damages to the doors is hereby awarded at \$250.00.

The landlord's application for plaster and wall repair is hereby dismissed without leave to reapply.

The landlord's application for carpet cleaning is hereby dismissed without leave to reapply.

The tenant's application for the return of the security deposit is hereby dismissed without leave to reapply.

I order that the landlord retain the security deposit and interest in the amount of \$425.00 in partial satisfaction of the claim. The landlord is also entitled to recovery of the filing fee in the amount of \$50.00 and I grant the landlord an order for the balance of \$269.83. 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 12, 2010.

Dispute Resolution Officer