

DECISION

Dispute Codes MND, MNR, 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 to the rented unit, for unpaid rent, for compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain all or part of the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

The hearing originally commenced on February 23, 2010, and was adjourned to April 13, 2010 at the request of the tenant, with the consent of the landlord.

Both parties appeared, gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence. A witness for the tenant also appeared, and gave affirmed evidence, and was subject to cross examination by the landlord.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

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

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

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

Background and Evidence

This tenancy began on June 1, 2008 as a one year fixed term tenancy and then reverted to a month-to-month tenancy. Rent in the amount of \$2,200.00 was payable

on the 1st day of each month. The tenant paid a security deposit in the amount of \$1,100.00 prior to May 1, 2008. The rental unit is a 3 bedroom house with a 2 bedroom basement suite which the tenant was at liberty to sublet, which he did.

At the beginning of the tenancy, the parties signed a condition inspection report that lists the rooms in the house and simply says “good” beside each room. It has no other information at all, other than the date of May 6, 2008 and the signatures of the parties.

The landlord testified that the parties had previously been to dispute resolution, and the landlord received an Order of Possession on October 13, 2009. At that point the tenant had paid rent for the month of September, 2009 by cheque, but the cheque was returned N.S.F., and the tenant had not conclusively proven that he had re-paid the rent for that month. The landlord is claiming rent for that month, as well as loss of revenue for October, less ½ of rent paid for October, and damages.

The landlord testified that the tenant was supposed to move out of the unit on October 13, 2009, but stayed 1 day longer with the landlord’s consent. He testified that the tenant left all the lights on and doors open, and did not return the keys. The tenant disputes this assertion, stating that he left the keys on the counter.

The landlord further testified that he removed 23 bags of garbage, over 400 recyclable cans and bottles, 5 propane cylinders, furniture, clothing, shoes, pillows, bedding, and a computer monitor, all belonging to the tenant.

He submitted several lists for which he is claiming, including rental loss in the amount of \$3,300.00, a damage and repair list amounting to \$1,252.09, a second damage list showing that he is charging \$50.00 per hour for 36 hours of cleaning, supervising cleaning, and removing items from the vacant unit, totalling \$1,800.00. He also claimed that the tenant was burning paper and wood in the gas fireplace, which rendered it unusable, and the landlord is claiming \$300.00 from the tenant to replace it. That item is included in one of the lists provided by the landlord. He further stated that the tenant broke the mirror in the bathroom. The summary document shows a total claim in the amount of \$5,241.36.

The landlord's summary document shows that he paid a locksmith \$26.88 to rekey locks on October 15, 2009. It further shows that on October 17, 2009 another \$26.88 was paid to rekey locks, and another \$6.72 on October 23 for 2 keys.

The tenant testified that the item claimed by the landlord, "repair vertical blind and curtains" in the amount of \$84.56 is incorrect; the blinds were all fine when he left. He also stated that removal of the satellite dish for \$50.00 was unnecessary because he told the landlord when he moved in that he would be leaving it behind, to which the landlord agreed. The tenant also disputes the other claims. He stated that there were not 23 bags of garbage left behind or clothing, mattress or pillows. He stated that the recycling is exaggerated. Further, the list of the landlord includes 17 light bulb replacements, and the tenant stated that he didn't think there were 17 lights in the house, and if he had left the lights on when he moved out, how could there be 17 lights requiring replacement?

The tenant testified that during the tenancy, the washer broke. The landlord sent a friend to fix it instead of a professional plumber, which resulted in a flood. Carpet cleaning was not done after the flood restoration people left, and it was not the responsibility of the tenant.

The tenant also asked the landlord why a different form was used for the condition move-in inspection than that used at the condition move-out inspection, to which the landlord replied that he had obtained the move-out inspection report from the Residential Tenancy Branch website after the tenant had moved in.

The tenant stated that the fireplace wasn't starting, but was not used to heat the house and denies burning paper or wood in it.

The tenant further testified that the garage had some items in it when he took possession, such as batteries and propane cylinders. There was also some shelving in the garage that had items on them, such as ladders and miscellaneous items. He stated that he had a barbeque, but he did not use the small cylinder type of propane tanks; he had one large tank for his barbeque which he took with him when he moved.

The tenant admitted that the rent cheque for September, 2009 was returned by the bank marked N.S.F., however, when the landlord attended to prune a tree in the back yard, the tenant paid him cash for that returned cheque. The landlord denied this assertion, stating that if he had received cash, he would have provided a receipt. When asked if he had receipts in his pocket, he replied that he did not.

The witness called by the tenant stated that she resided in the house with the tenant from the 3rd week of the tenancy until the tenancy ended. She testified that the landlord showed up often without notice, and walked into the house without knocking at least 4 or 5 times. In rebuttal, the landlord stated that he went in there 3 or 4 times when the tenants weren't home for an emergency.

She further testified that she personally witnessed the tenant give the landlord cash for the rent for September when he was there pruning the trees.

The witness further testified that the keys and garage door openers were left on the counter downstairs. The mirror in the bathroom was screwed to the door, and where that screw met the mirror, it was cracked and that was the condition of the mirror when she moved into the unit.

She admitted that they had left a couch and table at the residence, but not the other items claimed by the landlord. They did not leave a mattress or bedding behind, or clothing or shoes. Further, she asserted that 17 light bulbs being replaced by the landlord is ridiculous, as well as 23 bags of garbage. The blinds and curtains were fine when they moved out.

She testified that they did a giant recycling trip before they moved out, and they did not, nor would they have left over 400 cans and bottles.

With respect to the kitty litter and the pet cage, the witness testified that a tenant in the basement suite had a cat, but she was certain there was no kitty litter left behind, and certainly the tenant would have taken the cage when he moved. She does not recall one being left there.

The paper towel holder was cracked during the tenancy, which the tenant did not replace.

Analysis

The move-in condition inspection report is not useful for the purposes of this hearing, nor for the purpose of proving any damage or condition of the unit prior to the tenant moving in. A claim for damages by a landlord must pass the 4 part test:

- a) Prove the damage or loss;
- b) Prove that the damage or loss occurred because of a breach of the *Act* or tenancy agreement;
- c) Prove the amounts;
- d) Prove how the claimant mitigated the damages.

The onus is on the landlord to prove the claims made, and I find that the landlord's claims are exaggerated. The landlord cannot charge a tenant \$50.00 per hour for supervising cleaners, and I make no award in favour of the landlord for that claim.

I cannot agree with the landlord that the tenants ought to pay for the cleaning supplies the landlord bought. The landlord is claiming \$190.00 for cleaning services which would include cleaning supplies. I therefore make no award for cleaning supplies.

As stated in paragraph one of this analysis, I cannot conclude that the condition of the unit required cleaning because I have no evidence of the state of the unit prior to the tenant occupying that home, and therefore, I decline to award the landlord's claim of \$190.00 for cleaning services. Further, the landlord did not provide a receipt for payment of cleaning services, nor did he provide any photographs of the condition of the house after the tenants had vacated.

The landlord's claim for \$212.10 for carpet cleaning is also dismissed; the evidence is clear that the carpets were soaked from a flood caused by the landlord's decision to have the washing machine fixed by a friend rather than a professional trades-person or experienced appliance repair person.

The landlord testified that he had to replace 17 light bulbs, yet in his written claim he is claiming \$6.68. I find that the landlord has fabricated that evidence, and as such his credibility is in question. I decline to make any award for light bulbs.

I heard no evidence from the landlord about the condition of the kitchen range at the time the tenant vacated the house, and certainly no evidence that the burner protectors were required for anything beyond normal wear and tear, and therefore, I make no award for that claim.

The tenant's witness stated that a couch and table were both left at the residence, and I award the landlord \$30.00 for that claim.

The landlord did not dispute the tenant's testimony that he agreed that the satellite dish would remain after the tenant moved out, and I have no reason to believe otherwise. Further, the landlord has not produced any receipt for the claim on his list to a construction company to remove that satellite dish and therefore, I make no award for the removal of that item.

The landlord has also failed to prove that there was any damage to the gas fireplace, or that it was replaced. I have no receipt before me or invoice to indicate what was wrong with it or what damage may have been caused by the tenant, nor the actual cost. Accordingly, I make no award for the fireplace.

The landlord has also failed to prove that the blinds were in any different condition when the tenant moved out than when he moved in. He provided an incomplete invoice, partially typed and partially hand-written, however that item is not mentioned on the condition inspection report dated May 6, 2008.

I decline to award the landlord's claim for locksmiths and keys. The tenant and the witness both testified that the keys and the garage door openers were left on the counter in the lower unit of the house. I award the landlord \$1.11 for replacing the paper towel holder.

With respect to the outstanding rent, I am not convinced that the landlord would have been able to give a receipt to the tenant when he was at the house pruning the trees. The tenant and a witness gave evidence that the tenant had paid the rent in cash for the month of September, to replace the cheque that had been returned N.S.F. and both testified that that transaction took place when the landlord was at the residence pruning trees. I do find, however, that the tenant is responsible for the landlord's loss of revenue in the amount of \$1,100.00 for the month of October, 2009.

Conclusion

I find that the landlord has established a claim for \$1,100.00 in unpaid rent and \$31.11 in damages. The landlord is also entitled to recovery of the \$100.00 filing fee. I order that the landlord retain the deposit and interest of \$1,111.05 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$120.06. 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: May 6, 2010.

Dispute Resolution Officer