

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

The landlord applied for a monetary order for loss of rent, compensation for damage to the rental unit, compensation for loss and an order to retain the security deposit. The tenants applied for the return of their security deposit, including double the amount of the deposit. The hearing was conducted by conference call. The landlord and the named tenant participated in the hearing.

Background and Evidence

The landlord application for dispute resolution was filed on February 5, 2010. The landlord claimed the sum of \$14,765.00. He claimed the sum of \$4,165.00 made up of the following:

\$100.00 for Lawn decision...

\$1,850.00 Towards utilities as a reversal...

\$105.00 reversal on the functional shower provided

\$50.00 filing fees

\$700.00 for office area

\$210.00 for hindrance in access for repairs

\$100.00 for reversal of clean up costs

\$250.00 for cleaning marked on exit walk through

\$800.00 for damaged Chrome holder in bathroom and hardwood damage

The landlord claimed the further sum of \$10,600.00 said to be for the balance of lease rent.

There have been two previous hearings with respect to this tenancy. The tenants' application was heard on November 13, 2009 and a decision was issued on November

20, 2009. The tenants applied for, among other matters an order ending the fixed term tenancy effective November 30, 2009.

In The November 20, 2009 decision the Dispute Resolution Officer made the following determination with respect to the fixed term tenancy agreement between the parties:

Accordingly, I find that the tenant is not bound by provisions of the fixed term of this contract and is at liberty to vacate the unit as of November 30, 2009 without liability for rent after that period.

In the November 20, 2009 decision the Dispute Resolution Officer also decided that the tenants were not responsible for utility charges of \$270.00 per month and were entitled to be reimbursed for those payments in the amount of \$1,890.00. The tenants were awarded other amounts including \$700.00 for the loss of a functional office.

The landlord did not participate in the hearing that was held on November 20, 2009. He applied for and was granted a review of the November 30, 2009 decision. A review hearing was conducted on January 20, 2010. The hearing was conducted by conference call. The landlord participated in the hearing. He testified at the hearing and presented documentary evidence. By decision dated February 5, 2010 the Dispute Resolution Officer who conducted the review hearing confirmed the original decision and order dated November 20, 2009.

The tenants applied on January 20, 2010 for the return of their security deposit in the amount of \$925.00 paid on May 1, 2009. The tenants provided the landlord with their written forwarding address when they completed the condition inspection report with the landlord on November 30, 2009. The tenants did not agree to any deductions from their security deposit. The landlord filed his application claiming a monetary order and retention of the security deposit on February 5, 2010.

Analysis and Conclusion

The November 20, 2009 decision, confirmed by the February 5, 2010 decision after a new hearing decided a number of issues related to the claims the landlord has put forward on this application. The landlord has claimed \$10,600.00 as lost rent for the balance of the lease term, but the prior decision decided that the tenants were not bound by the tenancy agreement and could vacate on November 30, 2009 without liability for rent thereafter.

The landlord claimed \$1,850.00 on account of utilities however in the prior decision the tenants were awarded reimbursement of utilities paid in the amount of \$1,890.00.

The landlord has claimed \$100.00 for lawn cutting but the tenant was reimbursed that amount by the previous decision.

The landlord claimed \$700.00 for the office area. Again the tenant was awarded \$700.00 for loss of a functional office. The landlord is seeking to re-litigate that issue.

The landlord claimed \$105.00 said to be a reversal with respect to the shower provided. The tenant was awarded the sum of \$105.00 for a faulty shower; the landlord wishes to reverse that decision.

The landlord claimed \$100.00 as a reversal of clean up costs. By the prior decision the tenants were awarded this amount for necessary cleaning when they moved into the rental unit.

I find that the doctrine of *Res Judicata* operates to bar the landlord from re-litigating the matters referred to above because they are matters upon which findings of fact have been made and a decision on the merits has been pronounced.

The principle has been described as follows in a B.C. Supreme Court decision:
Saskatoon Credit Union v. Central Park Enterprises Ltd. (1988) 47 D.L.R. 4th at p. 438:

No one can relitigate a cause of action or an issue that has previously been decided against him in the same court or in any equivalent court having jurisdiction in the matter where he has or could have participated in the previous proceedings unless some overriding question of fairness requires a rehearing.

The above-noted claims are dismissed without leave to reapply.

The landlord claimed \$210.00 for “hindrance in access for repairs”. He has not provided evidence of any financial loss or cost occasioned by the alleged hindrance. In the absence of proof of damage this claim is denied.

The landlord claimed \$250.00 for cleaning. The tenant disputed that claim. He did not agree with the landlord’s notations on the condition inspection report completed at the end of the tenancy. The tenant testified that the rental unit was left cleaner on departure than it was found on move in. In the condition inspection the landlord referred to dust on baseboards, a dirty hardwood floor, a bulb out in an exhaust hood and he referred to a small plate on the deck that the landlord surmised might conceal damage. The landlord claimed the further sum of \$800.00 for a damaged chrome holder in the bathroom and for hardwood damage.

The tenant denied all these claims. The landlord did not provide any photographic evidence documenting the alleged damaged and he did not submit any receipts or invoices for repairs. I find that the landlord has failed to prove these claims on a balance of probabilities and they are therefore dismissed without leave to reapply. The landlord has been unsuccessful in his application and I decline to award a filing fee.

The tenants applied for the return of their security deposit on January 20, 2010. I find that the tenants provided the landlord with their forwarding address in writing when they completed the security deposit form on November 30, 2009.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an Order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Arbitration. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38 (6) of the Act provides that if the landlord does not take the required steps within 15 days, he may not make a claim against the security deposit and he must pay the tenant double the amount of the security deposit.

The landlord did not apply within 15 days to keep the deposit and he did not refund the deposit within 15 days as required by the legislation; the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$1,850.00. No interest has accrued on the original deposit amount. The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,900.00 and I grant the tenants a monetary order in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Dated: April 26, 2010.
